Public Utilities

FORTNIGHTLY

May 26, 1938

THE NEW ENGLAND COMPACTS FOR FLOOD CONTROL
By Walter S. Fenton

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Is Reproduction Cost Becoming Obsolete?
By Luther R. Nash

« »

If Not, Why Not?
By Will M. Maupin

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

MAKE your METERS GO 'ROUND

with this Genuine SILEX

"Bride's Special"

WITH sales mounting month after month—with dealers everywhere reporting that Silex, "the depression-proof appliance," is the "bright spot" of the year—the one appliance which can be bought with profit-confidence. Silex is a very important factor in the building of your connected load.

And now—with this "Bride's Special" backed by an intensive, hard-hitting advertising campaign — reaching 29,712,349 of the 29,904,633 families in the entire United States through the pages of 13 great national magazines —Silex Glass Coffee Makers offer you an extra load building opportunity.

The "Bride's Special" is the very latest Silex Glass Coffee Maker, the Delray Model, in black or red Moldex trim, with the newly designed Delray Stove embodying the famous Silex quick-cooling feature . . . brewing completed without removing glass from stove; and Strainex for making delicious tea, "it strains as it pours" . . . a $6.05 value for only $4.95 in black trim. Red trim . . . a $6.35 value for only $5.25. Also Kitchen Range Model "Bride's Special" with Strainex . . . a $3.55 value for only $2.95 in black trim. In red trim, a $3.85 value for only $3.25.

The "Bride's Special," of course, offers among others, these exclusive Silex features: Pyrex Brand Glass, guaranteed against heat breakage; patented Silex Filter which assures clear, clean coffee—free from all sediment.

Whether you merchandise or not, write for full details of how this "Bride's Special" can help build load on your line.

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THERE IS ONLY ONE

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TRADE MARK REGISTERED U.S. PAT. OFF.

BREWING COMPLETED WITHOUT REMOVING GLASS FROM STO

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Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH
Contributing Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXI *May 26, 1938* NUMBER 11

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

IN just a few days after the issuance of this number of the FORTNIGHTLY, delegates of, and others interested in the electric power industry of America, will gather for the sixth annual convention of the Edison Electric Institute at Atlantic City, N. J., starting June 6th. Notwithstanding the fact that this national assembly takes place during a period when the nation is in the throes of economic relapse and political confusion, there are a number of recent developments which make the immediate future of the electric light and power business appear a little brighter than it has been for quite a while.

GENERALLY speaking, there seems to be some practical basis for hope of an armistice and settlement of the wasteful feud which has marked the relations of the industry and the Federal government at Washington. When a committee of leading utility executives sits down in serious but cordial conference with a realistic SEC to discuss how the complicated provisions of the Holding Company Act can be carried out; when conferees to negotiations between the TVA and power companies in the Tennessee valley begin to report real progress; when certain utility concerns show evident intention of voluntary reorganization of capital structures which have been criticized in the past, there is reason to believe that there may at last be a turning in this long, long road which many feared could end only in complete socialization of the industry. Then, too, there is the outlook for further industrial expansion. Early this month, for example, a staff report of the Virginia State Corporation Commission showed that electric utilities in that state would increase their sales from 55 to 60 per cent by 1946, if the present rate of development continues. Doubtless, this condition is fairly typical of the general situation.

WALTER S. FENTON

Thanks to Federal wrangling over unimportant power rights, New England still lies as exposed to ravages of flood waters as in 1936.

(SEE PAGE 643)

Blackstone Studios

LUTHER R. NASH

"... the elasticity which the reproduction cost or trended original cost basis of rate fixing provides should have careful consideration."

(SEE PAGE 657)

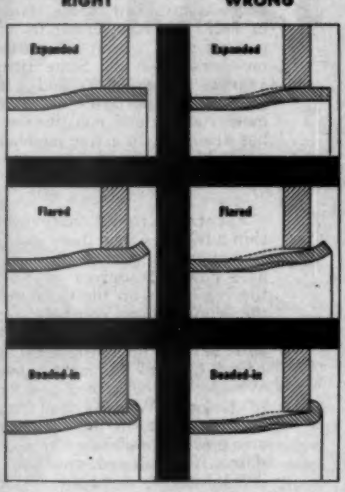
APPROPRIATELY, we are presenting in this issue an article by one of the leading figures in the electric light and power industry, LUTHER R. NASH, who, as most readers well know, has long been identified with the Stone & Webster organization. MR. NASH, whose article discussing the possible obsolescence of reproduction cost in regulatory valuations begins on page 657, is an alumnus of Massachusetts Institute of Technology. He later received an S. M. from Harvard. He is at present vice president of Stone & Webster Engineering Corporation in charge of appraisals.

THERE seems to be a good bit of argument at cross-purpose over the proposed flood control compact between New England States which has been blocked in Congress by the Federal Power Commission and some rather

Why High Ductility is Vitally Important

(a) Jones & Laughlin Seamless Tubes with their high ductility form a smooth, tight joint and "stay put" permanently...when they are expanded, flared and beaded in. See diagrams below.

(b) Tubes not sufficiently ductile resist forming and tend to pull away from the boiler plate. Such tubes require longer time for working and leaveimperfect joints. See diagrams below.



J & L manufactures a complete line of seamless and welded steel tubular products. This includes seamless pressure tubes, condenser and heat exchanger tubes.

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Flange steel plates and firebox steel.

re is why you get quick, easy installation, longer life and greater safety with

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hen boilers get the shut-down habit, Jones & ughlin Seamless Steel Boiler Tubes will help u get them back on the job in a hurry. Jones & ughlin Tubes roll in faster and then stay put. ey keep your boilers working efficiently and eco-mically because every length of Jones & Laughlin iler Tubes has built into it an extra margin of ength, safety and high ductility.

The dependable strength and durability of J & L ubes mean that boilers equipped with them stay on e job longer and with fewer costly shut-downs.

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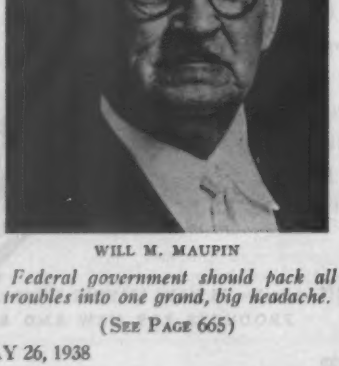
forthright critics of the private power industry. In the January 20th issue of the FORTNIGHTLY we published an article by the FPC general counsel, Oswald Ryan, which set forth (informally, of course) the legal position of the FPC with respect to its opposition to the original form of the compact.

IN this issue we are presenting another legal analysis of the New England flood control compact situation, this time from the viewpoint of an attorney who favors the position taken by the state governors. The author is WALTER S. FENTON, of Rutland, Vt., who has been a member of the Vermont bar since 1909, and was president of his state bar association in 1927. He has served in a number of important posts within his profession, including membership on the State Board of Bar Examiners (since 1929) and within groups organized for purposes of reviewing the Vermont statutes and constitution. Since 1935 he has also been an active member of the Section on Public Utility Law of the American Bar Association.

RECALLING recent charges by public ownership advocates that there is some sort of conspiracy on the part of utilities to capture valuable power resources at proposed sites for the reservoirs on the Connecticut river under the original flood control compact, it is interesting to note the testimony presented not long ago before the House of Representatives Flood Control Committee by Colonel R. A. Wheeler of the Army Engineers. According to Colonel Wheeler, only three out of 30 feasible dams on the Connecticut river have any power possibilities at all, and these three dams, if developed, could produce a total of 205 kilowatts, or about as much power as a small airplane engine develops. Only one of these three dams is included in the government list for immediate construction.



WILL M. MAUPIN

The Federal government should pack all its troubles into one grand, big headache.

(SEE PAGE 665)

IT is a horrendous picture of bureaucratic folly which our friend WILL MAUPIN, member of the Nebraska State Railway Commission, describes in his bantering article on TVA and other government adventures into the realm of business. He fails to understand how we can, as a nation, expect to live on government benefits derived from taxes we have to pay the government. It all seems so much like a man trying to make a dinner out of his own I.O.U.'s. However, America is not alone in its spending dilemma. Think of our British cousins who pay 27½ per cent of their income to the government, one-third of which is "earmarked" for guns, ships, planes, and other panoply of destruction. That would raise a nice question for a debate between Oxford and Harvard: "Resolved, That the building of a dam for power which may never be profitably used is a more useful way of spending tax funds than the production of armaments for a war which may never come."

COMMISSIONER MAUPIN will be readily recalled by regular FORTNIGHTLY readers. Born in Callaway county, Mo., in 1863, he entered the newspaper business at an early age and became one of the most well-known figures in Nebraska journalism before he became engaged in public service. For a number of years he served as an editor on William Jennings Bryan's *Commoner*.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

AN electric company, in the opinion of the Federal Power Commission, should not wait until expiration of its contract before eliminating discrimination. (See page 1.)

THE Pennsylvania commission has passed upon the question of proper certificates of electrical inspection. (See pages 6, 10.)

CHARGES for fire protection service and other matters relating to a water utility have been considered at length by the Connecticut commission. (See page 19.)

IN another case a public utility company has unsuccessfully sought judicial aid in resisting the encroachment of publicly owned and operated electric plants. (See page 56.)

THE next number of this magazine will be out June 9th.

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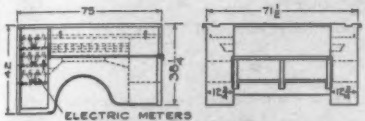
THE BIGGEST PACKAGE WE HAVE EVER OFFERED FOR THE MONEY



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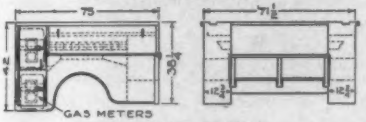

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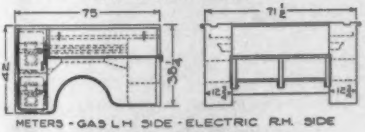
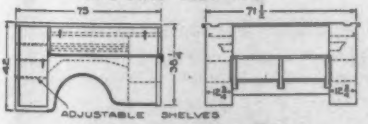


GAS AND ELECTRIC



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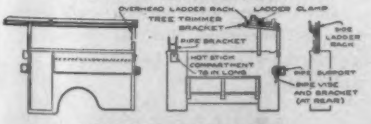

OPTIONAL EQUIPMENT

WITH THIS UNIVERSAL PUBLIC UTILITY BODY designed to meet five separate service requirements, we can offer a price based on the manufacture of 1000 units. Because of the demand for this type of unit and by thus standardizing our design, we are able to reduce our costs.

The horizontal compartments of the 4460 body feature adjustability of dividers and flexibility of tray requirements. Vertical compartments at the forward end add to make a total bin space of 30 cubic feet. Open space in the center of the body is available for the full length. The total floor space is 24 square feet.

Adequate provision is made for the protection of electric, gas, or water meters as the service requires. The shelves on which they are carried are fully adjustable. The compartments of the General Service body are designed to carry fixtures and tools for appliance repair work.

Electric meters of the conventional or socket type are set on moulded rings and held in position by rubber straps as shown.

• INFORMATION ON REQUEST

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CLEVELAND, OHIO

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

FLOYD W. PARSONS
Editorial Director, Gas Age.

"Pessimism is at an all-time peak."

ALF M. LANDON
Former Governor of Kansas.

"The basis of popular government rests on legislative government."

COL. LEONARD P. AYRES
Vice President, Cleveland Trust Company.

"Financial anemia is the ailment from which American business is suffering."

MAURY MAVERICK
U. S. Representative from Texas.

"Personalities are only important where they have clashed with each other, or where the given personality or personalities have been harmful to TVA."

BRUCE BARTON
U. S. Representative from New York.

"Every experienced man knows that government can never perform any great business undertaking as efficiently and economically as private business."

BERNARD BARUCH
Presidential adviser.

"As far as hydroelectricity itself is concerned, the march of science and invention has made steam generation more economical in many parts of the country."

WALTER M. PIERCE
U. S. Representative from Oregon.

"Public ownership must always be accomplished without injury to honest investment, for which private utilities and their holding companies have always been solicitous."

DONALD R. RICHBERG
Presidential adviser.

". . . no amount of good will and honest effort will create a responsible enterprise unless all of those engaged yield some of their individual freedom of action to the control of others."

ELIOT JANEWAY
Writing in The Nation.

". . . price rises, and the fear they provoke, will dog the steps of every wage increase so long as the fiction persists that wage increases cannot be absorbed by greater volume production."

CHARLES I. FADDIS
U. S. Representative from Pennsylvania.

"It [TVA] should be absolutely responsible to the Congress, and every other agency of this government should be responsible to the Congress. Representative government cannot survive otherwise."

H. STYLES BRIDGES
U. S. Senator from New Hampshire.

"It is no more fair for the United States to build, with taxpayers' money, a competing railroad or power line or gasoline station than it is to build a competing butcher shop or operate a competing vegetable stand."

W. D. MCFARLANE
U. S. Representative from Texas.

"We should bear in mind that these public utilities—radio broadcasting companies—differ from other public utilities in that they pay comparatively nothing in real property taxes, as they own but very little real estate."

EDITORIAL STATEMENT
Industrial News Review.

"Had the Federal government, deliberately and with malice aforethought, sought to conceive a regulatory policy for the railroads that would ruin them swiftly and surely, it could hardly have done better than it has done!"

JESSE H. JONES
Chairman, Reconstruction Finance Corporation.

"I do not subscribe to the theory that our railroads are doomed. We must have the best possible facilities and service, but the roads should give ground to that part of our transportation which can best be handled by other methods."

C. W. KELLOGG
President, Edison Electric Institute.

"Competition we are thoroughly accustomed to . . . This so-called government competition, however, is really not competition at all but persecution, with the cards stacked against us by heavy subsidies furnished by the taxpayers."

J. WILLIAM DITTER
U. S. Representative from Pennsylvania.

"The sanctimonious spirit of a more abundant life in the TVA has had an admixture of such worldly and grossly material things as personal ambitions and individual profits, so that many of its heavenly attributes are turning out to be dust and clay."

WILLIAM O. DOUGLAS
Chairman, Securities and Exchange Commission.

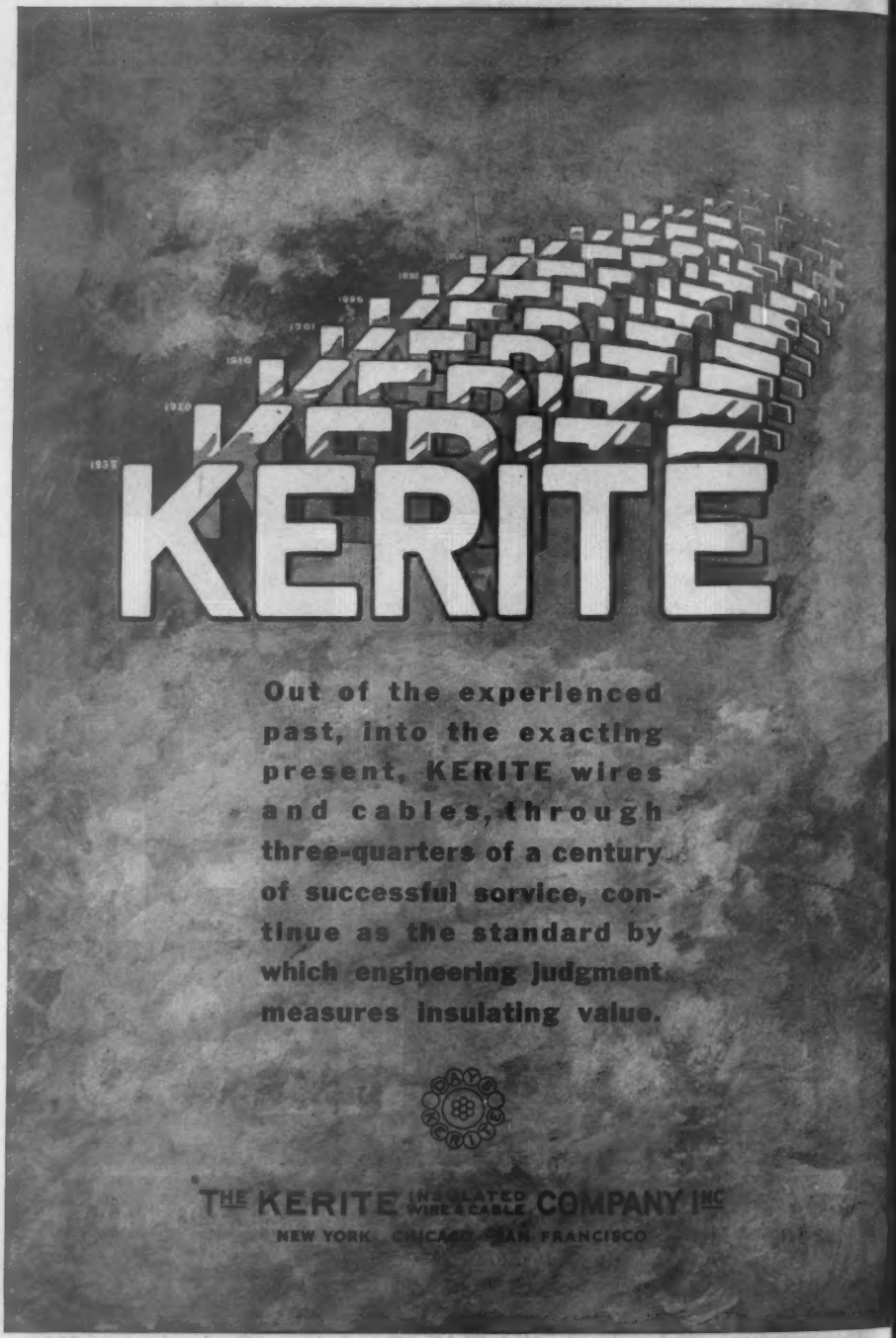
"Since the [holding company] law says simplification must be effected, we thought it was unfair to have the government hold a gun to the head of a utility company to force liquidation and at the same time make it pay taxes on the liquidation."

ARTHUR E. MORGAN
Ex-Chairman, Tennessee Valley Authority.

"I did not seek my present position in any way. It would be pleasanter to resign and do some of the many things I am anxious to get at. Yet, to surrender the chance to make some contribution to decency and effectiveness in government does not seem to be the right course."

FRANK MCMANAMY
Member, Interstate Commerce Commission.

"I have no panacea for the so-called railroad problem. As long as the railroads are privately owned and operated, the duty to solve their own problems and to provide safe and adequate transportation at just and reasonable rates, and the responsibility for failure to do so, rests upon them."



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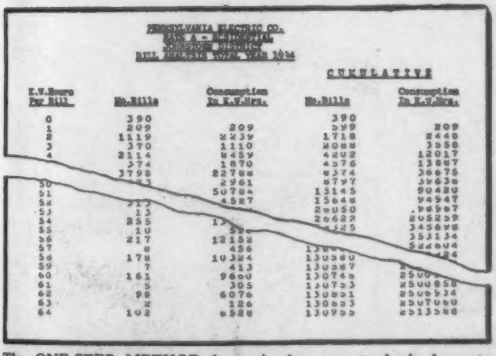
R & S ONE-STEP METHOD gives complete customer usage data currently at lower cost than periodic studies. Controlled accuracy eliminates re-checking and re-analyzing necessitated by other methods. Direct compilation from your billing register, or other customary record, eliminates advance preparation, field work, and interruption in your regular routine.

R & S Bill Frequency Analyzer is the practical answer in making complete, accurate consumption analyses. Provides full information in a single step at about 50% less than the cost of former methods.

R & S Bill Frequency Analyzer: developed for our Utility Rate Service. The kw.-hrs. billed are entered on the adding machine keyboard. A tape is prepared of all items and a consumption total accumulated which serves as a control. At the same time—through this *single* operation—the bill count for each kw.-hr. step is made by the electrically controlled accumulating registers.



The ONE-STEP METHOD is a simple, accurate basis for rate making. The number of bills from the machine multiplied by kw.-hrs. gives the total consumption in each block. From this record cumulative totals of bills and kw.-hrs. are prepared through each step.

A continuance of frequent rate changes—the necessity of checking load-building activities—the pressing need for current data on customer usage—are but a few of the reasons many Operating and Holding Companies are using R & S ONE-STEP METHOD to analyze and compile information required for scientific rate making. They have not only reduced the costs on this work, but have obtained monthly or annual bill-frequency tables in a few days instead of weeks and months.

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IN NATION-WIDE TRUCK POLL

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GUESS DODGE PRICE UP TO $135 MORE

...Yet Dodge is Priced with the Lowest!

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Best Proof of Extra Value!

Maybe we have told America too convincingly about the sensational extra-value features built into the new 1938 Dodge trucks. Perhaps people simply can't believe that Dodge can give so much extra for your money. Yet it's the truth.

Possibly you, too, have thought of Dodge as "worth more"..."higher priced." Today, in most cases, there is only a few dollars difference in the prices of the low-priced trucks. And Dodge is priced with the lowest!

Remember, Dodge makes a truck to fit your needs in its complete line ranging from ½-ton commercial cars to heavy duty trucks. So, before you buy any truck, ask your Dodge dealer to send a 1938 Dodge truck for you to try. Phone him today.

Tune in on the Major Bowes Original Amateur Hour, Columbia Network, every Thursday, 9 to 10 P. M., E. D. S. T.

So Much Extra Value in Dodge Trucks... That Buyers from Coast to Coast Overestimate Price

This advertisement endorsed by the Engineering Department, DODGE Division of Chrysler Corporation.

Hundreds of truck buyers from New York to California were asked in personal interviews to estimate truck prices in the low-priced field. A surprising percentage over-estimated the Dodge truck prices.

Many Buyers over-estimated Dodge truck prices $100 and more. When told Dodge prices, some immediately checked on the phone with local Dodge dealers. The answer they got was, "Dodge is priced with the lowest!"

NEW 1938 DODGE ½-1 TON PICKUP—6-Cyl. "L"-Head Engine—120" W. B.—All truck ...and built to haul bulky loads at a saving. Packed full of quality features that cut operating costs. See your Dodge dealer.

PRICED WITH THE LOWEST!

DODGE CHASSIS PRICES DELIVERED IN DETROIT

Including Federal Taxes. (Local, State Taxes Not Included)

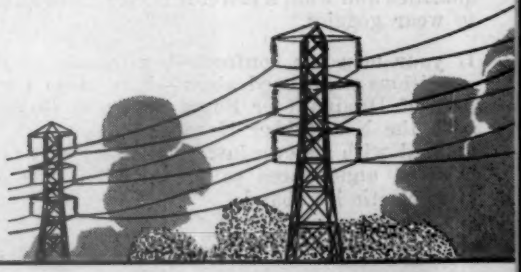
½-TON 116" W. B. CHASSIS $475
Price includes front bumper, spare tire, tube and tire lock.

1½-TON 133" W. B. CHASSIS $604
Price includes front bumper.

Other models, including ½, 1, 2, and 3-ton, at correspondingly low prices. **FOR DELIVERED PRICES IN YOUR LOCALITY SEE YOUR DODGE DEALER**... Budget terms to fit your needs.

To supplement your organization ...to save you the cost of breaking in additional linemen . . . to enable you to avoid discharging new men when a project nears completion.

Hoosier Crews Are Ready



HOOSIER ENGINEERING COMPANY

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Canadian Hoosier Engineering Company, Ltd.
Montreal

ERECTORS OF TRANSMISSION LINES

They're at it *again!*

CLEVER . . . these nation-savers who set up the "straw man"!

They know human nature. It's an old story . . . building a "straw man," labeling it "Business," using it as a whipping boy . . . clever, even if it isn't new. Some of the people fall for it all of the time.

But why a "straw man" *now?*

The answer is simple. There's a "recession" to explain. Things have "gone wrong," so the best defense right now is attack. An attack needs a target—and good old "Business" is nominated again.

The technique is easy. Single out an example, but don't use names. Just say . . . "See, here is a man. He is a bad man. He is also a businessman. Therefore businessmen are bad."

So easy to set up a "straw man" . . . so satisfying to crack him down! . . . over and over again! . . . the old trick with a new dateline!

Easy—but business—real business—*all* business suffers—the innocent many for the blamable few. And suppose all these bludgeonings, regulations, taxes do succeed in putting the K.O. on business. Who wins?

When businessmen cannot see what's ahead for them, when confidence crumbles and the public is slow to sow its dollars in the market place, when the chances for a fair and reasonable harvest are shadow-slim—pounding the "straw man" won't help.

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II

Utilities Almanack

MAY

26	Th	¶ *National Electrical Wholesalers Association ends annual convention, Hot Springs, Va., 1938.*
27	F	¶ *Association of Gas Appliance and Equipment Manufacturers concludes convention, White Sulphur Springs, W. Va.*, 1938.
28	Sa	¶ *Seventh Annual Petroleum and Natural Gas Conference ends session, State College, Pa., 1938.*
29	S	¶ *Canadian Gas Association will hold 31st annual convention, Toronto, Ont., June 9, 10, 1938.*
30	M	¶ *Wisconsin Municipal Utilities Association will hold convention, Marshfield, Wis., June 16, 17, 1938.*
31	Tu	¶ *Institution of Gas Engineers opens 75th annual general meeting, London, England, 1938.*

JUNE

1	W	¶ *Canadian Transit Association begins 34th annual meeting, Quebec, P. Q., 1938.*
2	Th	¶ *Pennsylvania State Telephone & Traffic Asso. starts meeting, York, Pa., 1938.* ¶ *A. G. A. Executive Conference begins, Chicago, Ill., 1938.*
3	F	¶ *Pacific Coast Gas Association will hold northwest conference, Portland, Ore., June 16, 17, 1938.*
4	Sa	¶ *American Transit Association, Bus Division, will hold executive committee meeting, June 24, 1938.*
5	S	¶ *New England Gas Association will hold summer sales conference, Newport, R. I., 1938.*
6	M	¶ *Edison Electric Institute opens annual convention, Atlantic City, N. J., 1938.*
7	Tu	¶ *New York State Telephone Association convenes for annual session, Rochester, N. Y., 1938.*
8	W	¶ *Conference of Mayors and Other Municipal Officials of the State of New York begins session, Elmira, N. Y., 1938.*

Mural by Boardman Robinson *Courtesy of the Treasury Department Art Projects*

Magna Charta

One of 18 mural panels, tempera on canvas, installed in the Ceremonial Entrance of the Department of Justice Building, Washington, D. C.

Public Utilities
FORTNIGHTLY

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The New England Compacts For Flood Control

Are interstate compacts as a means of solving regional problems doomed to failure?

By WALTER S. FENTON
MEMBER OF VERMONT FLOOD CONTROL COMPACT COMMISSION

On the afternoon of July 6, 1937, in the office of the governor of the great commonwealth of Massachusetts, the authorized representatives of four sovereign states met for the purpose of executing, on behalf of their respective states, compacts providing for the control of destructive flood waters of two of the larger river systems of the New England States. Massachusetts, Connecticut, New Hampshire, and Vermont had reached a satisfactory agreement respecting the basin of the Connecticut river, a problem common to the four states, while Massachusetts and New Hampshire, which, for geographical reasons, were the only states interested, had similarly solved the question of flood control on the Merrimack.

Except for the difference in the description of reservoir locations and the apportionment of cost between the states, the compacts were identical in form, scope, and content, and what would affect one would similarly affect the other, so that for the purposes of this discussion we may very properly refer to them as the New England Flood Control Compacts.

It was in many respects a historic occasion. Four highly individualistic states, each justly jealous of its own sovereignty, had, nevertheless, composed any differences of opinion which might otherwise have been fatal to such a program, and the way was clear, but for the mere matter of approval by Congress, for immediate construction of the projects comprehended in the initial plans for flood control.

On July 10, 1937, the eight Senators representing the four interested states jointly introduced in the Senate a bill granting the consent of Congress to the compacts (S.J.Res. 177), with the expectation that it would be promptly passed and the compacts thereby become finally and fully effective.

Similar resolutions were introduced in the House of Representatives by Congressman Clason of Massachusetts (H.J.Res. 435) concerning the Connecticut river compact, and by Congressman Tobey of New Hampshire (H.J.Res. 436) and Congresswoman Rogers of Massachusetts (H.J.Res. 430) relating to the Merrimack river compact.

NOTWITHSTANDING these compacts had been public documents for months before the ratifying resolutions were introduced in Congress, notwithstanding they had received wide publicity in the press, notwithstanding their terms were well known or could have been well known by anyone having any interest in the subject, notwithstanding they had received the unqualified and wholehearted public approval of the Secretary of War in a public address delivered more than two months previously, not a suggestion of criticism was heard concerning them from any source until about the time the ratifying resolutions were introduced in Congress.

Without any warning, the compacts were suddenly subjected to an attack from the Federal Power Commission, actively supported by the Chief Executive, and instead of being promptly ratified as the people of New England had every reason to anticipate, their present consideration was prevented and further action indefinitely, if not permanently, postponed.

The first criticism of the compacts appeared in an opinion prepared by an attorney of the Federal Power Commission, excerpts from which were published in the *Hartford* (Conn.) *Courant* of June 27, 1937. Singularly enough he concluded that the compact varied only in slight details from the Flood Control Act, which variance "would seem immaterial" if the Secretary of War did not object to "the slight encroachments upon his prerogative." His study was more particularly directed to a criticism of the Flood Control Act and the policy permitted under it and carried out by the compact, which might preclude "the plan of eight Little TVA's for the nation." Among other things he is quoted as saying:

> The ratification of the present compact will be a precedent which other sections will seize upon, and *the pressure will be difficult for Congress to resist.* (Italics supplied.)

THE Power Commission, however, was evidently gifted with second sight, for upon the introduction of the ratifying resolutions it asserted that while conforming to the congressional policy laid down in the Flood Control Act, in so far as flood control was concerned, the reservation in Art. VIII of the conservation and power values at

the reservoir sites beyond what was necessary for the primary purpose of flood control, was in direct conflict with the established policy of Congress under the Federal Water Power Act of 1920, as amended, and would divest the Federal government of its present control over the power resources of these regions and involve a surrender of the Federal interest in these streams asserted in the Water Power Act.

When on August 11, 1937, the Power Commission filed with the House Committee on Flood Control its report and recommendation on H.J.Res. 482 (the Brown-Casey Bill hereafter referred to), it had finally come to the conclusion that the compacts were fatally defective because title to the lands, easements, and rights of way requisite to the projects was not conveyed to the United States.

IF these progressively developing objections are sound, it seems somewhat strange to an interested observer why it appeared necessary for the introduction of legislation amending the Flood Control Act in such vital respects as to impose upon the New England States a rule directly contrary to that laid down in the Flood Control Act as applicable to the rest of the country. Although unqualifiedly recommended favorably and urged upon the House Flood Control Committee by the then chairman of the Federal Power Commission, his familiarity with the provisions of the Brown-Casey Bill was so limited that he could not express an opinion as to whether or not it did amend the Flood Control Act.

The Brown-Casey Bill has been so well characterized by Governor Cross of Connecticut that it can now be dismissed from further consideration with a short quotation of his views:

> This bill bearing the name of two of the five men who are its sponsors . . . has the distinction of being so loosely drawn that it could not be made the basis of any intelligent compact whatever. . . . *Neither the governor of the commonwealth of Massachusetts nor the governor of the state of Connecticut could be counted upon to submit to his legislature a compact involving the rape of two sister states.* Despite all their faults, there still survive in these governors, I trust, some traces of honor. (Italics supplied.)

THE bill attracted so little support that apparently it has been abandoned and in its place there has now been put forward the McCormick Amendment to the Flood Control Act of 1936, backed by the same interests which supported the Brown-Casey Bill and opposed the compacts. This amendment, if adopted, would completely reverse the whole fundamental policy upon which the Flood Control Act is bottomed, establishing in its place a policy diametrically opposed to it. Under this amendment state participa-

¶ *" . . . there has now been put forward the McCormick Amendment to the Flood Control Act of 1936, backed by the same interests which supported the Brown-Casey Bill and opposed the compacts. This amendment, if adopted, would completely reverse the whole fundamental policy upon which the Flood Control Act is bottomed, establishing in its place a policy diametrically opposed to it."*

tion in flood control by means of dams and reservoirs is entirely eliminated and the Federal government is authorized to go into any state to acquire, at its sole expense, the lands, easements, and rights of way essential to any such project, a policy which was definitely rejected by the Senate Commerce Committee when the Flood Control Act was under consideration in 1936.

If this bill is adopted, all remaining vestiges of state sovereignty would be practically swept away. While Massachusetts and Connecticut would receive flood protection without cost, New Hampshire and Vermont would suffer untold direct damage for which they could never be compensated, and the indirect damage would be beyond calculation.

DESPOILED of their natural resources, vast amounts of taxable values eliminated as sources of revenue, their economic future seriously impaired, their scenic attractions, on which they must rely as their chief remaining asset, marred by indiscriminate location of flood control reservoirs without regard to the wishes and desires of their people, the situation of Vermont and New Hampshire would indeed be cause for serious alarm.

Again it seems pertinent to inquire, if the objections to the compact are sound, why is it necessary to rewrite the Flood Control Act and establish a new policy in order to prevent ratification of the compacts as drawn?

The plain fact of the matter is that the compacts are not in conflict with the Flood Control Act but on the contrary are in exact accord with its terms.

The Omnibus Flood Control Act, approved June 22, 1936, laid down as a declaration of policy in the first section a recognition by Congress of a Federal interest in the subject of flood control, sufficient to warrant *participation* by the Federal government *"in cöoperation with the states . . . for flood control purposes."* (Italics supplied.)

Section 3 of the act prescribed the "cöoperation" required from the "states, political subdivisions thereof, or other responsible local agencies" as a condition precedent to *participation* by the Federal government. The share of the "states, political subdivisions thereof, or other responsible local agencies" is clearly and definitely set forth in the following language:

> that they will (a) provide without cost to the United States all lands, easements, and rights of way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of War.

UNDER §5, the act defined the *participation* by the Federal government in these flood control projects; *viz.*, the construction by the government of certain specific flood control projects described in that section.

In the report of the Senate Committee on Commerce, accompanying H. R. 8455 (the Flood Control Act), it was specifically stated:

> The committee has realized the difficulties which must accompany the execution of a flood-control project involving several states in securing proportionate coöperation from the states. *But it has held that general legislation providing for Federal participation in flood-control projects should include a requirement for a substantial measure of local contribution* in view of the local benefits which arise from the completed projects and *to insure that no measure is undertaken without the full coöperation of local interests.* (Italics supplied.)

Federal Despoliation of State Resources

"DESPOILED of their natural resources, vast amounts of taxable values eliminated as sources of revenue, their economic future seriously impaired, their scenic attractions, on which they must rely as their chief remaining asset, marred by indiscriminate location of flood control reservoirs without regard to the wishes and desires of their people, the situation of Vermont and New Hampshire would indeed be cause for serious alarm."

The House Judiciary Committee, reporting on a separate compact resolution (H. J. Res. 377), introduced by a Connecticut Congressman, giving consent to the New England States and New York to make such compacts concerning flood control and allied problems, said:

> The testimony before the committee showed that one state alone could not arrange for a system of flood prevention or elimination of pollution of the Connecticut river, one of the three rivers. *There will have to be a series of compacts or agreements to consider this subject, and possibly one or more commissions to comprehensively study and prepare solutions and control and govern the improvements after they are completed.* (Italics supplied.)
>
> *Such consent of Congress at this time is an expression of its interest in the subject matter, and is an invitation to the states to avail themselves of this constitutional method of settling interstate problems pertaining to flood control* and elimination of pollution. In recent years, Congress has passed many resolutions authorizing interstate compacts. (Italics supplied.)

THE Flood Control Act provided in §4 for such interstate compacts as follows:

> The consent of Congress is hereby given to any two or more states to enter into compacts or agreements in connection with any project or operation authorized by this act for flood control or the prevention of damage to life or property by reason of floods upon any stream or streams and their tributaries which lie in two or more such states, for the purpose of providing, in such manner and such proportion as may be agreed upon by such states and approved by the Secretary of War, funds for construction and maintenance, for the payment of damages, and for the purchase of rights of way, lands, and easements in connection with such project or operation. No such compact or agreement shall become effective without the further consent or ratification of Congress, except

under conditions which have no application here, or would be considered by the states here involved.

The question of development of power by the United States, at the site of any of the projects defined in the act, or the expenditure by the United States of any money for that purpose, under the provisions of the act, was specifically excluded from its terms. The Senate Commerce Committee definitely foreclosed any possible controversy on that subject, when it said in its report:

> The committee found it advisable to exclude from the bill certain reservoirs included in H. R. 8455, most of which are associated with power development, since the inclusion of such reservoirs in a bill devoted to flood-control measures would not appear appropriate.

UPON the enactment of the Flood Control Act, commissioners were appointed by each of the four states to study the situation and negotiate a com-

pact if a satisfactory solution could be worked out. The joint commissions labored diligently through the summer and fall of 1936 but without tangible result. These discussions finally culminated in a conference between the governors of the four states referred to and their Representatives and the Secretary of War and his assistants and advisers at Hartford, Conn., on March 8, 1937.

The conference was brought about at the suggestion of the Secretary of War, who advised that the President was deeply interested in the necessary agreement between the states and the Federal government being effected at an early date. The whole subject matter was exhaustively discussed and explored, with particular reference to the policy of the United States as to the type, character, and utilization of dam and reservoir structures for which any appropriation to carry out the terms of the Flood Control Act on the part of the United States could be expended.

The Secretary of War and his Chief of Engineers laid down and approved the policy subsequently incorporated in the compact and which would satisfy the requirements of the Federal government.

NOT only was this policy strictly in accord with the terms of the Flood Control Act, but it was the only practical, common-sense way to meet the situation. Unless conservation and power values in these reservoir sites could be preserved and developed by the states or some agency designated by them, they would be gone forever. Once dams designed solely for flood control purposes were erected, with no provision made for their further adaptation for conservation purposes, the entire value of potential power development vanished.

With four states involved it was apparent that they could not act individually, but must operate through a common agency, which should be empowered to give the assurances required by the Flood Control Act; to acquire and hold the lands, easements, and rights of way necessary for the flood control projects contemplated under the compact; to hold and save the United States free from damages due to the construction works, and to maintain and operate the works after completion, in accordance with regulations prescribed by the Secretary of War; and to accept moneys and funds contributed by the signatory states or any other source for the purpose of carrying out the terms of the compact. Such an agency was created in the form of an interstate corporation, known as the Connecticut River Valley Flood Control Commission.

THAT the compact and all of its provisions were in exact accord with the Flood Control Act and with the then policy of the national administration as laid down by the Secretary of War and his Chief of Engineers, whom Congress, in accordance with its time-honored policy, had selected for that purpose, when it committed Federal participation in these projects to their hands, let the Secretary of War himself be the witness.

Having in mind that his representatives, legal and engineering, were present at every session during which the compact was being written; that they assisted in its preparation; that he was kept constantly informed of its prog-

ress; that before it was submitted to any of the four legislatures it was first approved by his department; that the principal objections of the Federal Power Commission, which wrecked the realization of immediate flood control so much desired by the southern New England States, are that the states reserved to themselves the benefit of water conservation and power development, beyond what was required for flood control, and retained the title to the lands, where are located the proposed reservoirs; the testimony of the Secretary of War is a valuable contribution to the subject matter of the controversy.

IN a public address delivered at Washington on April 26, 1937, more than two weeks after Vermont had ratified the compact, enacted the necessary legislation to carry out its terms, appropriated the funds to comply on its part with its requirements, and had adjourned, referring to the Flood Control Act and the New England compacts, the Secretary said:

> *Under the existing legislation, the rights of way are furnished by the state or subdivisions thereof and remain the property of the state. In return, the states should reserve for future development the conservation values of the individual reservoirs.* The flood control program thus becomes a coördinate and comprehensive one for general conservation which will not only reduce the annual losses now sustained from floods, but will also return direct benefits to the areas in which the reservoirs are located.
>
> *The War Department is gratified with the prompt action of the four New England states of Connecticut, Vermont, New Hampshire, and Massachusetts is agreeing to an interstate compact, which will permit their compliance with the requirements of local coöperation established in the Flood Control Act, and at the same time will reserve for the states the right to develop the reservoirs in the future for other and additional purposes, and which is now being submitted to the legislatures of the respective states for approval. This compact, if adopted by the states and approved by Congress, will point the way to a closer coöperation between the states and Federal government in the execution of measures for the conservation and utilization of our natural water resources. These states desire to retain a measure of state control in reservoirs provided within their jurisdiction,* as do the states of Pennsylvania and New York who have already enacted legislation to provide for full coöperation with the Federal government. (Italics supplied.)

In the light of this plain and forthright declaration, so commendatory of the accomplishment of these four states, it is not particularly surprising that the people of New England were profoundly surprised and shocked when they learned of the objections interposed by a commission upon whom Congress had not imposed any duty concerning the Flood Control Act or its administration, objections which, when examined, prove to be without substance.

ONE of the most commonly asserted objections to these compacts, repeatedly reiterated, without semblance of foundation in fact is that they are *power*, and not *flood control* compacts. In no sense of the word are they power compacts. They do not undertake to

¶ "THE *Omnibus Flood Control Act, approved June 22, 1936, laid down as a declaration of policy in the first section a recognition by Congress of a Federal interest in the subject of flood control, sufficient to warrant* PARTICIPATION *by the Federal government* 'IN COÖPERATION WITH THE STATES . . . FOR FLOOD CONTROL PURPOSES.' "

provide for the production of power. They merely reserve to the states, wherein the sites are located, the right, under certain conditions, to make available storage or power values, if any such there be after the primary purpose of flood control has been fully satisfied, and at the sole expense of the state or its agency. It must be remembered that the states, other than the one where is located the site, have no interest beyond flood control. Yet under the agreement, they provide a portion of the acquisition cost and annual operating and maintenance expense for providing flood control at that particular site.

The common agency of the four states is charged with the management, operation, and conduct of the flood control enterprise. It holds title by perpetual lease to such of the lands, easements, and rights of way as are necessary for that purpose. It was imperative that it clearly appear that as to all other uses or purposes in which no other state had any interest, the state where the lands were located retained to itself such values, to be utilized in such manner as lawfully might be, without interference from any other state or from the common agency. For that reason the much criticized Art. VIII was inserted in the compact. It was specifically provided:

> The terms and conditions under which any such signatory state shall make available the rights of water conservation, power storage, or power development herein reserved shall be determined by separate agreement or arrangement between such state and the United States.

ALTHOUGH the then chairman of the Federal Power Commission in the hearing before the House Flood Control Committee was not prepared to say that in his opinion the compacts had the effect of ousting the Federal Power Commission of its jurisdiction to license power projects at the sites designated in the compacts, the proponents of the compacts did not hesitate to state to the committee that there was no intent to deprive the commission of that power, if it existed. In other words, if the Federal Power Commission, under existing law, had jurisdiction over these mountain streams, there was absolutely nothing in the compacts which deprived the commission of that jurisdiction.

Nor did the proponents of the compacts interpose the slightest objection to amending the ratification resolution, either as proposed by the War Department which had previously placed its stamp of approval on the compact as written, or by committee members who desired to have it clearly appear that ratification of the compacts would not be deemed to waive, diminish, impair, or in any way affect the provisions of any existing Federal law, particularly the Federal Water Power Act of 1920, and the jurisdiction of the Federal Power Commission thereunder. To the contrary, they expressed entire approval of the addition of such clarifying amendment. The Federal Power Commission declined to withdraw its opposition and accept the amendment proposed by the committee.

IN view of the constant reiteration by members of the commission and its counsel, concerning the "long-declared policy set forth in the Federal Water Power Act of 1920" for the utilization of water resources on navigable streams in every part of the country, it might be pertinent to inquire in how

Conservation and Power in Flood Control

"UNLESS conservation and power values in these reservoir sites could be preserved and developed by the states or some agency designated by them, they would be gone forever. Once dams designed solely for flood control purposes were erected, with no provision made for their further adaptation for conservation purposes, the entire value of potential power development vanished."

many instances since 1920 the commission has issued licenses for power projects on the main Connecticut river. It is believed that the records of the commission will fail to disclose a single occasion where such a license was required, but the record will definitely show that in at least two instances the commission has found that the river was not navigable, within the definition of the Federal Water Power Act; that its obstruction by dams would not in any way affect interstate or foreign commerce; and that licenses were not required.

As stated before, it is the reservation to the states contained in Art. VIII, of the power and conservation values in these sites beyond what was required for the primary purpose of flood control, that has occasioned the greater part of the opposition from the Power Commission. However, will anyone deny that under the Federal Water Power Act of 1920, as amended, a state has the right and authority to acquire the necessary lands and easements and construct a power development upon a stream to which the jurisdiction of the commission extends, upon compliance with the act?

The act specifically contemplates such action. Indeed, the commission is bound to give preference to the states and municipalities in such development. Yet because this compact reserves to the states only a part of the right and authority which they would otherwise have, merely the opportunity to avail themselves at their own expense of the potential values remaining after the primary purpose of flood control has been fully preserved and satisfied, this materially impaired right to be exercised in exact conformity to the provisions of the Water Power Act, if applicable, the opponents of the compact argue that thereby the long-established Federal policy is violated and the Federal Water Power Act of 1920 is practically rendered nugatory. The mere statement of the proposition demonstrates its fallaciousness.

NOTWITHSTANDING the many loose statements so frequently and repeatedly made by some of those opposed to the ratification of the compacts by Congress, that they deprive the Federal government of its long-established right to develop the potential power at these sites, no intelligent, honest-minded person who is at all

familiar with existing Federal legislation will assume to assert that the Federal government has authority under any existing law to develop a kilowatt of electricity at any one of the sites contemplated by these compacts. The Flood Control Act excludes such authority, as well as the expenditure of any funds of the United States for that purpose, and the Federal statutes will be searched in vain to find it elsewhere.

No more complete and authoritative statement of this proposition could be desired than the opinion of the general counsel of the Federal Power Commission, given on February 3, 1938, in response to the request of Congressman McCormick concerning the right of the government to use these dams and reservoirs for the generation of power, in the event his bill (H. R. 8997) amending the Flood Control Act should become a law. Among other things, the following quotation from the opinion is particularly pertinent:

> There is no doubt in my mind that in the event this bill becomes law, none of the dams or reservoirs constructed under the Flood Control Act of 1936 as so amended could be utilized by the Federal government, or by any agency or instrumentality thereof, for the generation and sale of power without further legislation by the Congress specifically authorizing such power development and sale.

POINTING out that clear congressional intent was revealed by the language of the act and by its legislative history, *that such projects, so far as the Federal government was concerned, were for flood control purposes only*, but that no further legislation was necessary to permit states, or their political subdivisions, or even private persons, to install facilities for development of power, upon compliance with the Federal Power Act, he concluded:

> *For the foregoing reasons, I am of the opinion that although the development of power at any of these dams constructed under the Flood Control Act of 1936 by states, their political subdivisions, or private agencies, is authorized by existing Federal law, it would be necessary to enact further legislation to permit any agency of the Federal government to use such dams for the generation and sale of power.* (Italics supplied.)

It would have been difficult for the most enthusiastic proponent of the compacts to set forth in stronger or more concise and persuasive language than the statement above quoted, the fundamental necessity for the inclusion of Art. VIII of the compact, reserving to the state, or such agency as it might designate, the right, at its own expense, to avail itself of the conservation, storage, or power development values in these sites, remaining after the requirements for flood control had been fully satisfied, and thereby preserve that which otherwise would be irrevocably destroyed and forever lost.

NOWHERE in the Flood Control Act can there be found a suggestion or intimation that the states, political subdivisions, or local agencies are called upon to provide "without cost to the United States, lands, easements, or rights of way" to enable the Federal government to build for itself power or storage reservoirs or to enable it to develop power at any of these sites. On the other hand, it is clear from the act that Congress did not intend that these values should be lost, for it provided in §5 that "penstocks or other similar facilities, adapted to possible future use in the development of adequate electric power, may be installed in any dam herein authorized when approved by the Secretary of War upon the recommendation of the Chief of Engineers."

The Federal government, being without power or authority to build other than flood control structures and having no existing right to develop power at these sites, this provision could only have been inserted for the benefit of the states, political subdivisions, or responsible local agencies, who retained whatever values there were beyond what was essential for flood control, when such development should be "approved by the Secretary of War upon the recommendation of the Chief of Engineers." This construction is made certain when the amendment of July 12, 1937, to the Flood Control Act (No. 208—75th Congress; Chap. 511, §1, 50 Stat. 515) is considered. Therein it is provided:

> . . . the plan for any reservoir project may, in the discretion of the Secretary of War, on recommendation of the Chief of Engineers, be modified to provide additional storage capacity for domestic water supply or other conservation storage, on condition that the cost of such increased storage capacity is contributed by local agencies and that the local agencies agree to utilize such additional storage capacity in a manner consistent with Federal uses and purposes.

It is repeatedly stated by those opposing the compact that, had the states acted in conformity with §4 of the Flood Control Act and drawn such a compact as was there contemplated, it would not have required the further consent or ratification of Congress. Nothing could be further from the fact. After granting consent to the states to enter into compacts to carry out the purposes of the act, it is specifically provided:

> *No such compact or agreement shall become effective without the further consent or ratification of Congress,* except a compact or agreement which provides that all money to be expended pursuant thereto and all work to be performed thereunder shall be expended and performed by the Department of War. . . . (Italics supplied.)

The *general* rule laid down therein specifically requires the "further consent or ratification of Congress." The *exception* to the general rule does not, and by the very nature of things cannot, apply here. Providing for the construction of an initial plan of eight reservoirs, this compact contemplates a long-range, comprehensive program for flood control on the Connecticut river and its tributaries, and the enlargement and expansion of such projects to an ultimate control of approximately 21 per cent of the drainage area. The operation and maintenance of the system of flood control is under the jurisdiction of the common agency of the four states which share the annual cost.

The commission created under the compact as the common agency is required to make studies, in coöperation with the War Department, for the development of such comprehensive

¶ *". . . because this compact reserves to the states only a part of the right and authority which they would otherwise have, merely the opportunity to avail themselves at their own expense of the potential values remaining after the primary purpose of flood control has been fully preserved and satisfied, . . . opponents of the compact argue that thereby the long-established Federal policy is violated . . ."*

plan and to report and make recommendations from time to time to the signatory states. The lands, easements, and rights of way are acquired in the first instance by the state in which they are located. As the plan develops the states, from time to time, must appropriate additional money for their acquisition. It is not a mere matter of turning over to some governmental agency an initial sum of money to be by it expended as it may see fit and that be the end of it. Such a procedure would not only be impracticable but, under the conditions that necessarily exist in connection with carrying out the plans contemplated, it would be impossible.

Furthermore, the experience of the last four or five years in Federal spending has not been such as to be conducive to the probability that the New England States, particularly Vermont, would voluntarily constitute any Federal department the disbursing agent of their funds.

Of even less merit is the proposition belatedly put forth that the compact is defective because title to the lands, easements, and rights of way is not vested in the United States. One may read the Flood Control Act with the most minute care but he will fail to find any provision therein whereby title to the "lands, easements, and rights of way" to be provided by the states "without cost to the United States" is to be conveyed to the Federal government. Ever since 1928 substantially the same language has applied to the Mississippi Flood Control Act. Yet in every instance, although the flood control works have been constructed by and at the expense of the Federal government, title to the lands and easements has been taken and held in the name of the state or the local agency. It can hardly be supposed, after such a long practical construction of substantially similar language, that Congress intended the exact opposite of such construction in the Flood Control Act of 1936.

Prior to the passage of the Flood Control Act of 1936, three flood control reservoirs had been constructed or were under construction in the Winooski river basin in Vermont, under contract between the state and the government. The provisions for state and Federal *participation* were substantially identical with the language of the Flood Control Act. The state provided the lands, easements, and rights of way; the government constructed the dams; and upon completion the state was obligated to take over and operate them at its own expense. In every instance the title was taken and is now held in the name of the state. No suggestion or intimation was ever made by anyone that the title should be in the United States.

At the hearings before the House Flood Control Committee, the unequivocal statement was made by a member of the committee, and nowhere controverted, that in every instance, covering some forty projects in which allotments had been made under the Flood Control Act, including reservoirs in several states, the states were taking title to the lands. Yet it is urged that a different rule should be applied to the New England States.

Up to now the Federal government has followed a policy of aid to the states in matters in which they may be said to have a common interest, among which may be included flood control. Under

Power Commission Objects to States' Rights

" . . . the principal objections of the Federal Power Commission, which wrecked the realization of immediate flood control, so much desired by the southern New England States, are that the states reserved to themselves the benefit of water conservation and power development, beyond what was required for flood control, and retained the title to the lands, where are located the proposed reservoirs . . . "

this new dispensation advocated by the opponents of the compact, we are told that the states are to be permitted to contribute to the aid of *Federal projects,* for which, when completed, the states must assume the entire burden. Under this theory we have a *Federal project* to which the states have contributed the lands, paid all damages due to the construction work, and for the operation of which, when completed, the Federal government declines all responsibility. At least it has the dubious merit of being a somewhat novel departure from precedent.

But of course no such construction is permissible under any recognized rules of statutory construction. Nevertheless, it is interesting to note that for some unexplained cause the War Department has modified the policy which it promulgated at Hartford on March 8, 1937, and which its legal and engineering representatives assisted in writing into the compact with its unqualified approval, for on August 30, 1937, it issued an order that where authorized projects were for dams and reservoirs having potential power, the states' political subdivisions or local agencies would be "required to convey to the United States a clear and unencumbered fee simple title to the lands required for the dam structures and such contiguous land as may be necessary for the eventual construction of power houses, switching stations, and other appurtenances."

They are also required to convey by the same kind of title the lands for the reservoirs unless the Department, after investigation, determines to accept a perpetual flowage easement without any limitation or restriction whatever on the purpose for which the water is to be stored. It is intimated that if no potential power exists, such conveyance of title will not be required, and at this moment there are under construction in western Pennsylvania two flood control reservoirs, built under the Flood

Control Act, the title to which rests in the name of the state or its own agency.

NOTWITHSTANDING Congress has definitely stated in the Flood Control Act that the states are to provide, without cost to the United States, only such lands, easements, and rights of way as are necessary for flood control, and have excluded therefrom all power development, under this regulation, to avail themselves of the benefits of flood control, the states are compelled to turn over to the United States lands, easements, and rights of way greatly in excess of what is required for that purpose, at a vastly increased cost to the states, from which the states are not only to get no benefit, but will suffer serious detriment, and which, under any existing Federal law, the United States is powerless to utilize. It is respectfully submitted that there is a total lack of any legal basis for such a construction of the act. Nor is there any language anywhere in the act which permits a distinction between project sites having potential power values and those which do not have such possibilities.

Meanwhile the ratifying resolutions, favorably reported by the Senate Commerce Committee, and by the House Flood Control Committee with a clarifying amendment, lie dormant on the calendars of both houses, their consideration successfully prevented, while the people of New England are no nearer to safety from destructive floods than when the Flood Control Act was passed two years ago. Still exposed to the ravages of flood waters, such as engulfed them in the spring of 1936, with not a shovelful of earth yet turned for their protection, notwithstanding they have promptly and effectively met every requirement on their part to be performed, they will know where rests the responsibility for their unfortunate situation should another such disastrous calamity overwhelm them.

So What Department

"THERE is no reason, of course, why in a democracy the utilities and their investors should not propagandize in their own interest, even though contrary to the welfare of the public at large, provided bribery and underhand methods are not practiced . . . But although utility investors have a right to present their side, it is absurd to pretend that their activities are distinguishable from those of the utilities behind them."

—EXCERPT *from editorial in The Nation.*

Is Reproduction Cost Becoming Obsolete

As an element in utility fair value?

This question, in the opinion of the author, based on an analysis of two recent Supreme Court cases should be answered in the negative, unless some substitute for this evidence of fair value can be found which avoids criticism, not only of many individuals but also of courts, on the subject.

By LUTHER R. NASH

FORTY years ago the Supreme Court of the United States in a railroad rate case defined the basis of value to be used in confiscation proceedings. This definition included original cost and present cost as two of the elements which have since been given outstanding consideration. For the past thirty years this definition of value has been repeatedly reaffirmed and has been used by state regulatory commissions in fixing rates of public utilities.

In the initial case, Smyth *v.* Ames,[1] the railroads contended for original cost and the representatives of the shippers urged cost of reproduction which at that particular time was lower. With the passage of time the relation between original cost and cost of reproduction has changed and there have been reversals of the contentions of the interested parties. In a material portion of these cases it has been apparent that the basis emphasized by these parties has been that which would give them the advantages in rates for which they were contending. In addition to the cases in which self-interest has been influential there have been many others in which original cost or, to use the more recent term "prudent investment," has been favored because of the alleged greater readiness of its determination and recurrent use.

The January 20, 1938, issue of the FORTNIGHTLY contained a summary of the practices and preferences of the state commissions as between original cost and reproduction cost. It appears that two state commissions have practically throughout their history based their findings in rate cases upon actual investment, a very large proportion of which has been made under

[1] (1898) 169 U. S. 466, 42 L. ed. 819.

their direct supervision. Four other state commissions have used this same basis for extended periods. At least as many more favored that basis but have been restricted in its application through deference to the "law of the land." Sixteen other state commissions, or more than half the total number which defined their procedure for the purpose of this review, have followed the rule of the Supreme Court and given consideration to both original cost and reproduction cost. Although the weight given to reproduction cost has varied through wide limits, there has been general recognition of the rule laid down in the Minnesota Rate Cases[2] that "value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

IN recent years the opposition to any consideration of reproduction cost has become increasingly acute. Many discussions of the subject have condemned this method as destructive of effective regulation and as being otherwise cumbersome, expensive, and unreliable. Such views were emphatically expressed in an article by Carl I. Wheat, counsel for the Federal Communications Commission, appearing in the August 5, 1937, issue of PUBLIC UTILITIES FORTNIGHTLY, in which he referred to cost of reproduction as "poetic imagery" and in other caustic terms. Much of the recent criticism has come from Federal agencies which are seeking through accounting revision and otherwise to determine not only original cost as heretofore understood but also the cost of the property when first devoted to public service.

The California Railroad Commission which, like the Massachusetts Department of Public Utilities, has continuously used original cost in rate proceedings, has ably defended its practice in the following language taken from its decision in the Pacific Gas & Electric Company Case,[3] to which further reference will be made:

> During its entire history in establishing reasonable rates for utilities similar to this company, to determine a proper rate base this commission has used the actual or estimated historical costs of the properties undepreciated, with land at the present market value. Consistent with this, it has used the sinking-fund method to determine the allowance for depreciation to be included in operating expenses.
>
> This historical method has dominated the commission's findings for several principal reasons. It is well grounded upon established facts, it is not subject to the vagaries of pet theories, unlimited imagination, and abrupt fluctuation of current prices and passing conditions, and therefore indicates a truer measure of value upon which, through the application of rates, a return may be allowed to reimburse the owner for his enterprise and insure the integrity of his capital honestly and prudently invested. At the same time it prevents unwarranted demands upon the consumer through the projections of future rates on ephemeral values and stabilizes rates so that economic shocks from such changes are reduced to a minimum.
>
> It is an economical procedure, where the books of the companies are reasonably well kept, as obtains in practically all of the major utilities of this state, full compliance with which will prevent unwarranted expenditures of money by the commission, the public, and the company, which inures to the benefit of both the consumers and the utility. It is a more rapid procedure insuring quicker compliance with necessities as they arise.

THE case from which the above was quoted was appealed by the company to the Federal courts on the ground that the commission had relied wholly on original cost as representing fair value and refused to give any consideration to evidence of re-

[2] (1913) 230 U. S. 352, 57 L. ed. 1511.

[3] (1933) 1 P.U.R.(N.S.) 1, 11

production cost presented by the company. The commission appealed to the Supreme Court from the injunction which was granted by the Federal court and was joined in its appeal by the Federal Power Commission, which included in its brief the following statement:

> Standing on the threshold of a new era of Federal regulation involving an industry which for the first time has been subjected to the regulatory power of Congress and faced with the important function of rate making, the Power Commission is deeply concerned in the establishment of a legal principle which will be consistent with and not obstructive to a sound administration of the rate-making power. If the Power Commission is to be required under the Constitution, in fixing electrical rates, to consider reproduction cost as an essential element in the determination of a rate base, its administrative task will be well-nigh impossible of performance. It believes that a sound basis —sound in administration, in economics, and in law—upon which the public utility properties should be valued for rate-making purposes is the historical cost of those properties—that is, the prudent investment in them. It believes that such a basis is entirely consistent with the requirements of the Fifth and Fourteenth Amendments of the Constitution.

IT was hoped by many government agencies and officials, as well as some other organizations and individuals, that the Supreme Court in this case would make a definite finding as to the basis of value in which reproduction cost would have no part. The decision of the court, rendered on January 3, 1938, did not confirm these hopes. The commission in its presentation of its case had denied that it had failed to consider reproduction cost and that its failure to give it substantial weight was due to inconsistencies in the evidence presented to it, thus denying the contention of the company on which its appeal had been based.

The court held, as in the Los Angeles Gas & Electric Company Case,[4] that it was not concerned with the methods and reasoning adopted by the regulating agency but rather whether the rates fixed by the commission would result in confiscation. In the absence of a complete record of the proceedings below, the court could not itself determine whether or not the rates in question were confiscatory and the case was sent back to the Federal court for further investigation and findings.

It is obvious in this, as in many other cases, that the commission might apply a liberal rate of return to an inadequate valuation and thereby avoid either confiscation or unfairness, and it was clearly the intent of the Supreme Court that the court below in its reconsideration of this case should examine with care both of these factors entering into the determination of adequate distributable income.

THE conclusion to be drawn from the Pacific Gas & Electric decision is that it embodies no direct re-

[4] 289 U. S. 287, P.U.R. 1933C, 229.

¶ "IN *recent years the opposition to any consideration of reproduction cost has become increasingly acute. Many discussions of the subject have condemned this method as destructive of effective regulation and as being otherwise cumbersome, expensive, and unreliable . . . Much of the recent criticism has come from Federal agencies . . .*"

versal of previous rulings as to the basis of value. It does not suggest that cost of reproduction is no longer a significant factor nor does it indicate that dominant weight should be given to original cost. It referred to its previous findings that "no one would question that the reasonable cost of an efficient public utilities system is good evidence of its value at the time of construction," and that "such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices."[5] Referring in part to earlier decisions, the court also said that while the court has frequently declared that "in order to determine present value, the cost of reproducing the property is a relevant fact which should have appropriate consideration, we have been careful to point out that the court has not decided that the cost of reproduction furnishes an exclusive test and in that relation we have emphasized the danger in resting conclusions upon estimates of a conjectural character."

Apparently, however, the court was not unanimous in feeling that its decision in this case was following a beaten path. Two conservative members, Messrs. Butler and McReynolds, were disturbed at what they believed to be a trend away from precedents and felt that in stressing results rather than method and in failing to sustain earlier views as to the significance of cost of reproduction when properly developed, the court had permitted undue emphasis to be placed upon original cost.

[5] McCardle *v.* Indianapolis Water Co. (1926) 272 U. S. 400, P.U.R. 1927A, 15.

STANDING alone, this case might be so regarded; but such a view is not supported by the Indianapolis Water Company decision rendered on the same day. In that decision the case was also sent back to the lower court for further attention because that court had neglected in its previous consideration to make allowance in its finding of fair value for certain substantial increases in prices which had occurred while the case was under consideration. It would seem obvious that if present cost of reproduction and material change in price levels which affects such cost were of no significance this case would not have been sent back for reconsideration. At any rate that seems to be the view of Mr. Justice Black, who submitted a dissenting opinion in which he set forth forcibly and at length his views of the weaknesses of the reproduction cost method. He was very frankly of the opinion that original cost was the only proper evidence of fair value.

In the light of the foregoing discussion of these two recent cases it may fairly be stated that the question embodied in the title to this article as to the obsolescence of reproduction cost should be answered in the negative unless we can find some substitute for this evidence of fair value which avoids the criticisms not only of many individuals but also of the courts on this subject. These criticisms are fairly summarized in the Wheat article referred to above. He lists among the objectionable features of the conventional cost of reproduction appraisal the assumption of nonexistence of the present plant, excessive supervision, organization and legal expenses, cost of grading and paving

Trended Costs As a Measure of Value

"THE writer has used this trended original cost method in a number of cases and has been impressed with its reasonableness where records of original cost are available or can be estimated with reasonable accuracy. In substance this method assumes that the labor and material costs and overheads relating thereto were those existing on appraisal date rather than those prevailing at the time the property was actually constructed."

which did not exist at the time of original installation, traffic and other present obstructions which were originally not existent, excessive allowances for omissions and contingencies, taxes on interest during construction, fantastic claims for going value and other similar claims.

REFERENCE is also made to prices for telephone equipment charged by Western Electric Company to other Bell subsidiaries which failed to follow the trend of other comparable commodities. Apparently Western Electric Company failed to reduce its prices during depression years when other and more competitive commodities were drastically reduced, but it may be that a study of comparative prices during years of prosperity would show a lower relative level of telephone equipment prices than other commodities, indicating a policy of relative stability of prices which, over a period of years, might be advantageous to both the telephone companies and their subscribers.

Many of the criticisms above outlined are due to a misconception of the character and purpose of an appraisal of reproduction cost. Public utilities have become monopolies, subject to regulation largely because of their necessarily high investment in relation to revenue. In the industrial field any producer is subject at any time to the risk of a competitor establishing an equivalent plant under the then prevailing costs of construction, such plant to be built on a wholesale basis rather than on the piecemeal basis which has been the common experience of existing plants. Regulation in the public utility field undertakes as far as practicable to reproduce theoretically the conditions existing in competitive industries and to fix rate levels which are consistent with such conditions.

ONE distinction should be recognized in that a new producer in the competitive field may build a more modern and efficient plant than those previously existing, and for complete analogy the reproduction method in a utility case should apply to a correspondingly modern and efficient plant rather than the one actually existing. This procedure has however been frowned upon by both commissions and courts because of the wide differences of opinion which would exist as to the character of such a substitute plant.

The prevailing practice provides for the appraisal of a duplicate plant built at one time rather than on a piecemeal or historical basis. This difference in construction procedure accounts for a large part of the alleged high appraisal overheads as compared with actual or historical costs. Under piecemeal methods engineering, supervision, interest, taxes, and other similar items may be relatively small and their cost may not have been properly recorded in the fixed capital accounts. Actual costs also include all property and the contingencies of construction, whereas a properly made appraisal assumes a certain normal construction procedure and requires such supplementary allowance for waste and omitted items as experience has shown to be necessary. The critics of reproduction cost often fail to recognize that the wholesale methods employed assume a much more efficient use of material and labor and a much lower bare construction cost than would actually be experienced historically. It is commonly found that such saving in construction cost offsets the higher overhead charges which the method requires.

THE typical appraiser, having an engineering type of mind, is apt to attack his problem in a literal way and naturally assume that reproduction should be determined under existing conditions, that is, with the traffic and other obstructions which would be encountered today although they did not exist historically. He may be inclined to assume the cost of cutting existing pavements for laying subsurface structures although this was not necessary originally, but in most such cases he is instructed not to depart from historical conditions because of controlling court decisions. The inclusion in certain cases of taxes on interest during construction has also been severely criticized. An engineer, recognizing that interest during construction is part of the cost of a job, may occasionally include this element of cost if and to the extent that taxes are assessed during the construction period in the locality where the work is being done, but the resultant item is too insignificant for serious attention. Going value appears to be an increasingly controversial item, and a reproduction appraisal necessarily considers its elements as they exist at the time rather than as they have been developed historically.

Summarizing the foregoing comments it may be stated that the reproduction cost method has as its purpose the assembly of certain evidences of value which courts have held to be pertinent, to be used in connection with actual investment or any other evidences of value which may also be significant. However, recognizing the objectionable features which may be involved in the reproduction method, it is timely to inquire if some other

procedure cannot equitably be substituted if thereby controversy and caustic criticism can be avoided. Such a method has been suggested or forecast in recent controlling decisions.

SEVERAL years ago in a telephone case originating before the Maryland commission the Supreme Court criticized the specific method used by the commission but indicated that if appropriate price trend indices had been applied by the commission to original cost of the property the resulting evidence of value would have been given weight.[6] Similar comment was made by the Supreme Court in a more recent telephone case in Ohio,[7] and in one of its most recent decisions, the Indianapolis Water Case previously referred to, the court sent the case back to a lower court for further consideration of the effects of price trends.

The writer has used this trended original cost method in a number of cases and has been impressed with its reasonableness where records of original cost are available or can be estimated with reasonable accuracy. In substance this method assumes that the labor and material costs and overheads relating thereto were those existing on appraisal date rather than those prevailing at the time the property was actually constructed. Consistently applied, the method reflects the original condition of construction with all its contingencies and piecemeal characteristics, although in some cases appraisal engineers have taken into account more modern construction methods and facilities.

THIS method is subject to any desired degree of refinement. There are in existence composite construction cost indices applicable to the several types of public utilities, necessarily based upon conventional proportions of the various elements entering into such properties and similar labor relations, and such indices are useful where only approximate totals are needed. Maximum refinement on the other hand will take all the basic elements entering into a particular property and combine them as they actually exist, comparing original with present unit prices, and giving, therefore, a true picture of that particular property. Apparently this method avoids much of the criticism directed against the reproduction method. In the Wheat article previously referred

[6] West *v.* Chesapeake & P. Teleph. Co. (1935) 295 U. S. 662, 8 P.U.R. (N.S.) 433.

[7] Ohio Bell Teleph Co. *v.* Ohio Pub. Utilities Commission (1937) 301 U. S. 292, 18 P.U.R. (N.S.) 305.

¶ *". . . it may be stated that the reproduction cost method has as its purpose the assembly of certain evidences of value which courts have held to be pertinent, to be used in connection with actual investment or any other evidences of value which may also be significant. However, recognizing the objectionable features which may be involved in the reproduction method, it is timely to inquire if some other procedure cannot equitably be substituted . . ."*

to, this method is commented upon favorably, and in general criticism from other sources has so far been lacking when the method has been properly applied.

In certain cases in which the writer has been interested both reproduction cost and trended original cost have been determined as accurately as possible and the same thing has been done in other cases of which records are available. They all show a surprising agreement between reproduction cost and trended original cost, the differences being very small percentages. The reason for this agreement has already been suggested, namely, that the higher overheads necessarily applied to reconstruction cost are substantially offset by the higher cost of actual piecemeal construction with its lower overheads.

If the critics of reproduction cost base their opposition to it on the grounds of the illogical assumptions and conditions embodied therein rather than the fact that the result may be substantially higher than original cost, and they are willing to accept a trended original cost, then the controversy over evidences of value ought to disappear. There may remain questions as to the "prudence" of original cost but these should not in most cases substantially affect the results.

It is not the intention of this article to go into the broader economic questions involved in the determination of fair value. Various writers have from time to time pointed out the danger involved in adherence to actual investment as a basis of rates because of the rigidity involved therein. An increasing proportion of the output of electric and gas utilities is used for industrial and other purposes where competitive costs are controlling factors. If utility rates have a fixed basis differing from that applicable to the industrial field, there may be times when such rates will be so high as to encourage industrial plants to take care of their own power and fuel requirements, whereas at other times these industries may be paying substantially less for purchased service than it is worth to them. It is for such reasons that the elasticity which the reproduction cost or trended original cost basis of rate fixing provides should have careful consideration. If the former is objectionable because of its complications and the latter is not, it offers substantially the same economic advantages with respect to rate regulation.

Coming Features

Stop, Look, and Listen
By Herbert Corey

Dispersion of Prices for Domestic Electric Service
By Herbert B. Dorau

The Federal Power Plants and Public Power
By J. D. Ross

If Not, Why Not?

A former newspaper man ponders over some intriguing questions of the day

By WILL M. MAUPIN
MEMBER, NEBRASKA STATE RAILWAY COMMISSION

WHY not a trust to bust all trusts? Or a holding company to hold all companies?

I have been pondering these questions quite a bit ever since we engaged in a war to end all wars, and more so since the idea was promulgated that it would be a pious idea to organize an electric octopus to swallow up all the little octopi now swimming about in the murky depths of our business seas. After we get through with knocking the hosiery off'n the electric octopi by bringing forth one papa octopus to swallow up the entire genus octopi, we have a clear field ahead of us. Then we can start in on the railroads and one TVA railroad system for yardstick purposes, although what we would measure with it when all the railroads were one might be a question. Then there are the several thousand telephone companies, mutual and otherwise, and the radio organizations, and the telegraph outfits, and the sugar manufacturers and refiners, and the woolen and cotton fabric outfits, and the automobile organizations. The list is so long that even cursory cogitation thereof inclines one to an attack of blind staggers.

The proposal that we now combine all the federally financed public power districts into one for the purpose of swallowing up all the privately owned electric utilities gives us the proper lead. If there are those inclined to wonder who will pay the taxes after all our utilities and manufacturing industries are federally owned and therefore tax free, let them rest content. Those who gave this TVA idea birth will doubtless be able to solve a minor problem like that. They haven't yet, probably because it is such a small item that they have overlooked it. They remind me of the man who spent a lifetime constructing what was to be the world's greatest and best bass viol. After it was completed he called all the world to see and hear, only to make the disconcerting discovery that he had left his gluepot inside of it.

But somehow or other the real solution after all this combination is perfectly simple. Like the few score

people shipwrecked on a desert and uninhabited island who earned a good living by taking in each other's washing, we could all work for each other at equal wage and square accounts at the end of each year.

AFTER having lived in this vale of tears for almost three-quarters of a century, the first two-quarters of which we managed to get along fairly well by encouraging individual initiative, and the last quarter of which we have come to depend upon our avuncular relative down in Washington to provide for us, I am inclined to join the procession and remark somewhat emphatically, "To Hades with all of it; let's go the whole hog and have done with it!"

Remember when Tom and Huck were sailing across the country in their balloon and Tom just knew they were not flying over Illinois, because Illinois looked green and Tom knew from his geography that it was yellow? Why not all become color-blind and make all states alike by wiping out all state lines, do away with all state regulatory bodies, obliterate what little remains of states' rights, and have the whole thing done by one superorganization functioning in the dim distance where it will not be interrupted?

Personally a one-man dictatorship is no more repugnant than dictatorship by a little coterie of men self-appointed and self-annointed to handle all our affairs for us without interruption from any of us. About the time I began taking notice of the opposite sex and wondering if Dad would discover the surreptitious use of his beloved razor, industry had a habit of training men for future leadership in industry, but that has become a silly and old-fashioned notion. Today we depend upon a bunch of men as ignorant of the electric industry as a porcine is of Latin, to organize and manage an electric district in which they have not a dollar other than the dollars they pay, even as you and I. They merely get the money from the town pump down in Washington, which aforesaid pump sucks up the water we call taxes that you and I have to drain into it. That the pump will cease to elevate when we are no longer able to pay taxes is something none of these eminent business developers seems ever to have thought about.

BUT the queries advanced in the beginning are intriguing, to say the least. They remind me somewhat of the Townsend plan. We can, as long as we are able, tax ourselves and, from the money thus obtained, live comfortably without working, or even thinking. Why think when thinking is barren of results?

But I am told that honest confession is good for the soul, so I am aiming to do my soul good. Heaven knows it needs it. I confess that the mental processes of some of these eminent business developers is quite beyond my ken. I know one utility commissioner who still thinks that a corporation's depreciation reserve is a bunch of real dollars kept hidden away in a safe. He believes, too, that an elastic yardstick —one that contracts in cold and expands in heat—is quite good enough to measure a public utility corporation; but I am convinced that his good wife would refuse to use it when she buys a dress pattern. Strange as it may seem, while there are men who urge the use

Who Will Pay the Taxes?

"IF there are those inclined to wonder who will pay the taxes after all our utilities and manufacturing industries are federally owned and therefore tax free, let them rest content. Those who gave this TVA idea birth will doubtless be able to solve a minor problem like that. They haven't yet, probably because it is such a small item that they have overlooked it."

of such a yardstick, our women, God bless 'em, hold to the archaic idea that a yard contains thirty-six inches, never more, never less. It may be intuition on the part of our women, but after nearly a half-century with one woman I have come to rely upon it more fully than I do upon the judgment of some of my male acquaintances.

A FEW years ago I heard much of a "model town." It was to be a yardstick by which all future town builders were to measure their efforts. It has been so long since I heard the name of that town mentioned I am not sure that I remember it correctly. Was it called "Norris"? I visited it once. It was a beautiful little city. Set amidst the Tennessee hills, surrounded by trees of nature's own planting, it gave me the yearn to live there. A beautiful little 5-room bungalow, architecturally appealing, electrically equipped from heating to lighting and cooking, for less than $30 a month! Gosh-all-hemlock, what an appeal to a fellow who paid $45 a month for a bungalow no better, and in addition had to pay taxes thereon, keep up his repairs and insurance, pay extra for light and heat, and actually pay for the water on his lawn. This model city was erected with your money and mine for the purpose of housing the workers on the Norris dam on Clinch river. The fact that only about one in four was occupied, the workers preferring the barracks, is not to be considered. It was merely a small part of the plan now so ardently promoted by the yardstickers. But, as I remarked before, it has been quite a spell since I read any panegyrics on this model city. What has become of it? How many of its beautiful little bungalows are occupied? Who is paying the upkeep and expense of operation of the magnificent $200,000 school building which was erected in the model town of Norris?

BEFORE I venture an answer to the initial inquiries beginning this maundering article, I would like to know a bit more about the Norris of today that I heard so much about some three years ago. I am not like the colored maid who answered the telephone:

"Hello! Huh? Co'se I'll marry you-all. Who is dis talkin'?"

I am still so old-fogyish that I like to have a little information before answering. There are too many who remind me of the Swede who had his girl out for a buggy ride:

"Hulda, vill you marry me?" asked Ole.

"Yah, I marry you," replied Hulda.

Several miles were covered without another word, and finally Hulda asked:

"Ole, vy don't you say something?"

"Aye tank I talk too damn much already," growled Ole.

We've had a lot more talk than real information on too many of our present-day problems. There are some few of us left who resemble the old darkey who became lost in the midst of a furious thunderstorm. Bewildered by the darkness and terrorized by the crashing thunder, he stumbled over a log and dropped on his knees to pray:

"O, Lawd, if'n it's jus' th' same to you-all, please give this old darkey a little less noise an' a lot mo' light!"

I leave it to my readers, if any, if that wouldn't be a mighty good prayer for all of us to utter during these tumultuous days.

NO worshipper of the gods of the things that are am I. I believe in change—even in the interpretation of the Constitution. But now and then I am prone to question the good judgment of some of the leaders who suggest change. I would rather trust to the judgment of a Walter Chrysler in the matter of automobile construction than the judgment of Senator Whosis who doesn't know the fan belt from the chassis. Should I be in need of a surgical operation I would prefer a real surgeon to a taxidermist, no matter how skilled the taxidermist in manipulating a knife. Some of these promoters of TVA's, little and big, remind me of the old story told of Theodore Roosevelt.

The story goes that Teddy died and was greeted at the gate by good Saint Peter.

"Come right in, Teddy," said Saint Peter. "I'll show you around and ask you for suggestions."

After the tour Saint Peter asked for suggestions.

"Don't like the heavenly choir."

"What do you suggest, Teddy?"

"I want ten thousand more tenors, ten thousand more contraltos, and ten thousand more sopranos."

"How about the basses, Teddy?"

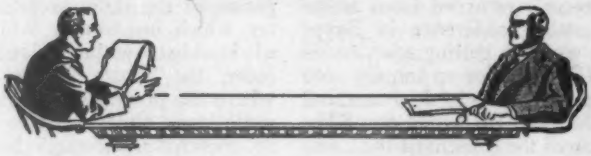
"O, I'll sing bass!"

I INSIST that we need more basses in this TVA chorus, and not quite so many thin, piping tenors. Things are not as they should be; certainly not what I would like them to be. How to make them better is beyond my mental ability to solve. But in the solution thereof I shall insist that we give more heed to the voice of experience than to the voice of mere promise and prophecy, especially the promises and prophecies of politicians more intent on personal aggrandizement than upon the good of the public. I greatly fear that if we listen too long to this class of leadership we will find ourselves much

in the position of Uncle John Oliver, the gristmill owner whom I knew as a boy down in Missouri. Uncle John had his own ideas about this, that, and the other thing. One day the country folk, gathered at Uncle John's mill to discuss religion, politics, and the state of the Union, began discussing the subject of Hell. Each one had his own ideas about it. Finally Uncle John ended the argument so far as he was concerned.

"Boys," said he, "I believe there is a Hell where we are punished for all the evil things we do on earth, but I don't believe it is a lake of fire and brimstone where we are to be burned forever and ever. Why, dammit, we just couldn't stand it!"

We of this country have stood a lot during the past few years, but, dammit, there are some things we just couldn't stand.



Why Business Men Are Puzzled

"AMERICAN Business is not synonymous with economic royalism. Its deliberate goal is not monopoly. It is not bent upon the destruction of the little guy. It is not dishonest. It is not conducted by 'malefactors.' It does not willfully demoralize the stock market. It does not wish to pay starvation wages. It does not like bloodshed. It does not want war. American Business has been involved in these crimes, and some elements appear to be unregenerate. But they are not the characteristic acts of Business. And they do not express its basic desire.

"The characteristic act of American Business is the act of making a profit. And its basic desire, often obscured by violent surface phenomena, is that every Business man, from the farmer to the manufacturer of steel, should operate at a profit. Business is interested, that is to say, in the distribution of the profit act in such a way as to create the biggest possible national income. And concerning its ability to do this it need only point to its past record. Beginning as a poor adjunct of British industry and commerce, American Business caught up with the industrialism of Europe in a hundred accelerating years, outstripped it early in the twentieth century, and emerged from the World War as the No. 1 industrial and financial society. This, the biggest and fastest show in history, was not staged by statesmen or priests or the army or the navy. It was staged with land and crops and mines and applied science and machines and men and money—and Business staged it.

"Having achieved a kind of feverish millennium, which raised the Businessman and the Commonman alike to a dizzy and unforgettable height, American Business fell to pieces in 1930; the Commonman walked the streets; and the mastery of the industrial world was lost. In this predicament Business called on Washington, as it had done so often during the past hundred years. But instead of getting land grants and post offices and mineral rights and higher tariffs and other hitherto helpful things, it got a series of laws that injected into it a number of unfamiliar and debatable factors. The Business man had been struck with awe by the depression. But now he was baffled by the laws. He was baffled—and he began to be afraid—because the laws seemed persistently to disregard the necessities of the fundamental act of his life, the profit act upon which his society had been erected."

—EXCERPT *from editorial, Fortune Magazine.*

Wire and Wireless Communication

SENATOR Wallace W. White, Jr., (R., Me.) recently returned from an international radio conference in Egypt and went to work on getting adopted his resolution (S. 149) for an inquiry into broadcasting conditions in the home and foreign fields. The job would cost $25,000. He secured the consent of the Committee on Expenses for this expenditure and now seeks assistance from Chairman Burton K. Wheeler (D., Mont.) of the Senate Committee on Interstate Commerce to have it adopted. This support will not be hard to get. Passage over the White House opposition is something else again. Just the same it looks like the long-awaited investigation of the FCC by Congress is in a fair way to becoming an actuality.

The White investigatory resolution is heavily disguised as a simon-pure radio probe, but to many on Capitol Hill the FCC is the real villain in the piece and, in truth, the commission may be so treated if, as, and when hearings get under way. The reason for all the camouflage, of course, is that the administration forces have been sitting very tightly on the FCC lid hoping to keep any political fireworks under cover until Congress gets out of town (which would mean that the whole situation would be well in New Deal hands until the fall campaign is out of the way).

But there are a number of congressional critics of the political and personal rivalries within the commission, who were just as determined to smoke the FCC stump just to see what will run out, if anything. Under the circumstances, they will have to be satisfied with a back-door approach, in the form of an investigation of the radio broadcasting industry, which, incidentally, will get its share of brickbats without doubt. Furthermore, the Senate is the only branch where the proponents of such an FCC-radio probe have been able to make real progress so far, although there are a number of House members (including the chairman of the powerful House Rules Committee, John J. O'Connor) who are, at this writing, working diligently in the hope of having a House investigating committee join the Senate party. In that event, the $25,000 ante would be boosted.

In the event that this investigation does get final approval of either or both houses (and it has come so close before and failed that Washington observers are keeping their fingers crossed), it is expected that the fun will start when commission members and subordinates begin to put into the committee record some of the interesting things they have been saying about each other unofficially for many months. Gossiping politicians, especially of the Republican faith, are just dying to hear it all. They may have to postpone their pleasure, however, because of rumors of a gentleman's agreement on Capitol Hill to keep the investigation out of the headlines until the fall campaign is virtually finished.

* * * *

ALTHOUGH President Roosevelt's plan for revamping the agencies of the government has gone a-glimmering for the present, at least, there remains in the minds of many congressional members the thought that this coördination should

be effected by them. They argue that the present unwieldy set-up is too expensive for even the richest nation in the world, and that with taxes mounting heavily something must be done to consolidate bureaus and commissions to the end that the present rule of waste should give way to one of saving Mr. Taxpayer's money. Congress feels it can do this job just as well as the Chief Executive. It is jealous of its rights. Since it passes appropriations and has members who are continually studying the question, many members reason that they should not be placed in the position of a lot of school children and be forced to accept detailed guidance.

There is, for instance, one agency (not the FCC, of course) which costs more than $1,000,000 a year and does little more than compile its annual report. This summary is read by only a comparatively few persons. About the first of April, every year, the executives in charge of the work look at the unspent balance on hand, find there will be some funds that could be returned to the Treasury, and then feverishly use up these by sending agents hither and yon to many parts of the United States and abroad so the unused part of the appropriation will be spent before the last of June—end of the fiscal year, when unused appropriations lapse. It is a clear waste of the people's money, and this goes on in many parts of the government.

All members in Congress know of this condition. Few say anything about it. There may come a time when they will want help to get their own measures through.

But the feeling is growing that a halt should be called to this spending splurge and the government headed the other way. Members realize that unless they make this effort, the opposition to the reorganization plan may be used as a kick-back at them by the White House.

ONE resolution aimed toward consolidation of offices is that offered on April 20, 1938, by Representative Albert L. Bulwinkle (D., N. C.). If the House Rules Committee thinks well of the proposal, it will be reported out and, if passed, will direct Speaker Bankhead to name five members of the Committee on Interstate and Foreign Commerce as a select body to investigate agencies dealing with the transportation problem. The members of this special committee would report to Congress at the next session its findings and conclusions.

But behind this lies the idea of looking into the feasibility of unifying all government bodies now supervising the (1) railroads, (2) motor busses, (3) water carriers, (4) air transportation, and (5) communications. A new cabinet officer to head the Department of Transportation and Communications would be named, says Mr. Bulwinkle. Under this proposed cabinet member would be five assistant secretaries, each in charge of one section. For instance, all the executive and administrative duties now performed by the seven-man Federal Communications Commission would be placed in the hands of one assistant secretary.

Then, apart from the cabinet officer and responsible to Congress alone, would be set up a division for legal review. This agency would decide all quasi legislative matters and make judicial findings, and its rulings would be final unless overruled by the courts. This Authority, says Mr. Bulwinkle, would be named by the President but would be removable only by Congress. Its judicial actions would not be subject to pre-review by anybody.

AKIN in some respects to this proposal is the bill to create a Civil Aeronautics Authority which may be passed at any time. This measure (H. R. 9738) would coördinate under a single independent agency all functions of the government having to do with civil aeronautics, and, in addition, would authorize this new agency to perform certain new regulatory functions designed to stabilize air transportation in the United States. The report on the bill by the House Interstate and Foreign Commerce Committee said:

> It is the view of your committee that the functions of the Federal government relating to transportation should be consolidated in a single agency as soon as possible. However, it appears at this time that it is im-

possible to secure a proper coördination of all of the functions relating to civil aeronautics in one agency otherwise than by reorganizing the Interstate Commerce Commission or by creating a new agency for that purpose. The Interstate Commerce Commission, the only available existing agency, would unquestionably be overburdened by undertaking the establishment, operation, and maintenance of all airways, air-navigation facilities, and landing areas, and safety regulation of both air-carrier operation and private flying, and the economic regulation of air-carrier regulation. Moreover, such functions, except for the latter, are entirely unlike any function now performed by that agency.

Since the consolidation of all the transportation functions of the Federal government in a single agency will require continued study and since the aviation industry is desperately in need of this legislation at once, your committee recommends that an independent establishment be created to perform the functions relating to aeronautics.

In order to have a unified, efficient regulation of competing means of transportation the powers of such agency must be distributed according to the different functions performed. We now have no such agency.

This legislation has the approval of the aeronautical industry, the private flyers, and the executive departments which deal with civil aeronautics, *i. e.*, the Departments of Commerce, Post Office, State, Navy, War, and Treasury.

ENACTMENT of this statute would withdraw safety supervision from the Department of Commerce, economic control over air lines from the Post Office Department, and authority to fix rates from the Interstate Commerce Commission. For one thing, it would abolish the present system of air-mail contracts and permit any carrier holding a certificate authorizing the carrying of mail to perform those functions.

Members of the proposed six-man Authority would be named by the President, confirmed by the Senate, and removable only for cause. These officials would be empowered to (1) issue certificates of convenience and necessity, (2) fix rates for carrying passengers, property, and mail, (3) regulate interrelationships among air carriers and between air carriers and other branches of the aeronautical industry, and (4) promulgate all air traffic rules. Within the Authority, but appointed by the President, confirmed by the Senate, and independent of the Authority, would be a Director of Safety to investigate accidents in air commerce which then would be reported to the Authority. A third office would be that of Administrator, appointed and approved as the others, whose duties would be to establish airways and construct, operate, and maintain air-navigation facilities and landing areas on such airways. The House committee believes the creation of this Authority not only will aid the industry by concentrating all governmental duties in one bureau but that it will materially lessen the present cost to the government of these duties now diversified among three agencies.

A minority movement, led by Representative Carl E. Mapes (R., Mich.), sought to keep the rate-making authority in the Interstate Commerce Commission, but it was turned down by a vote of 72 to 46.

When and if the Department of Transportation and Communications is founded, this Aeronautical Authority can easily be made into one of its branches.

An agreement has been reached by the House Interstate and Foreign Commerce Committee to take up at the next session of Congress the suggestions of President Roosevelt for a reorganization of the Interstate Commerce Commission and other agencies having to do with the regulation of common carriers. Members considered the time at this session too short to give the questions involved the thoroughness of study they deserve. Also of ruling importance was the fact that, with the biennial elections coming on, no concerted consideration of the problems is possible at the present session.

* * * *

ASSAILING the Federal Communications Commission's policy of licensing radio broadcasters as an indirect government censorship of free speech, David Sarnoff, president of the Radio Corporation of America, drew an angry reply from Commissioner George Henry Payne, who charged Mr. Sarnoff's assault is "evidence of the organized move-

ment of the radio monopoly to mould public opinion to its will" and control thereby both the industry and the commission. Mr. Sarnoff spoke at the luncheon of the Town Hall of New York on April 29th and Mr. Payne replied in a speech before the National Academy of Broadcasting in Washington on May 3rd.

One of Mr. Sarnoff's principal points was that the commission wields a stick over the heads of broadcasters by limiting licenses to six months instead of three years, as is allowable under the law. He declared valuable investment therefore rests on the whims of a few commissioners, and he resented the attitude of some quarters of the government toward the profits made by the broadcasters.

After taking a slap at Mr. Sarnoff as the head of the company that allowed the Mae West broadcast, and pointing to the large profits made recently by the sale of several stations, Mr. Payne said the industry is becoming negligent of the public interest and arrogant, "filling the air with trivial programs" and "conditioning the public to like these programs." He asserted "the rate of profit made by many broadcasters is far in excess of that earned by the American Telephone and Telegraph Company, by the U. S. Steel Corporation, or by any physician or lawyer. The business of the broadcaster is unique in that his main asset, almost his sole asset, is something that has been loaned to him by the government without any charge whatever."

Antedating this exchange of criticism, it can be said that there is within the commission a feeling that licenses are being granted for too short a period. If, and how soon, a change will come it is impossible to say. The movement for this hinges upon two actions by Congress. The Havana radio treaty, when adopted by the Senate which received it from the President on May 12th, will open up many new frequencies, and it is considered best to delay the granting of licenses of one year or longer until after that treaty becomes effective. Other commissioners think a definite statement of the length of time a broadcasting station can be shut off the air for infractions of the law should be inserted in the statutes before the change is made. At present, the commission is allowed either to revoke permanently a license at any time or refuse its renewal. But there is no penalty under what might be called "police power" for minor offenses. The belief has been expressed that the statutes should permit a maximum suspension of five days each six months for violations.

There will be a spirited opposition to any extension proposal. Lawyers will oppose the change, probably surreptitiously among their friends in Congress, because the lengthening of licenses will mean a reduction in the year's total amount of their fees. Some members of the FCC think it will weaken the commission's hold over broadcasting agencies. They are almost united against the position of National Broadcasting President Lenox R. Lohr that the license period should be extended to three years.

* * * *

THE Mackay Radio and Telegraph Company has carried to Congress its appeal from a ruling by the Federal Communications Commission denying it the right to establish communications with Oslo, Norway. President Luke McNamee of the company, testifying before a Senate Interstate Commerce subcommittee on Senator Wheeler's bill (S. 3875) to encourage competition in direct radio communications, charged the commission with aiding the maintenance of a monopoly in the foreign field. He said the commission held it would be poor policy to permit two American companies to compete for a contract with a foreign country since that country might "play one company off against the other to the disadvantage of American business interests."

Opposing Mr. McNamee was Frank Wozencraft, general solicitor for RCA Communications, Inc., who stated the Mackay Company sought "competition for the sake of competition, whether it was economically valuable, efficient, or otherwise advisable."

Financial News and Comment

By OWEN ELY

Business Turn Near?

DESPITE the apparent revival of confidence indicated by the action of security markets in April—following defeat of the reorganization bill and announcement of the President's new inflation program—business news thus far has continued very disappointing, with little indication that inflation will "take" as it did in 1933. Weekly business indices such as the *Times'* and *Barron's* have resumed their downward trend, following an earlier tendency to flatten out; the *Times'* index is now at the lowest level since September, 1934. The Dow-Jones index of commodity futures and Moody's spot commodity price index have also dropped to lower levels after a moderate "inflation" upturn around mid-April. Sales of new automobiles proved disappointing in April, the gain over March being below seasonal proportions, with the result that production schedules are being revised downward and proposed radical changes in next fall's new models abandoned. Even the building industry, for which high hopes had been stimulated by Washington statistics of mortgage applications, has failed to measure up to expectations.

These developments have occurred despite a gradual improvement in the political atmosphere and Congress' moderate "turn to the right." Disagreement of many business men with the administration's monetary policy, and disappointment of others that that policy has not given commodity prices an immediate stimulus, probably account largely for the general let-down.

In the writer's opinion, however, there is no reason to assume that the downward spiral must inevitably continue. While the administration, Congress, the CIO, and other "enemies" of business have been reluctant and dilatory in their concessions, nevertheless a more conciliatory tone is evident in Washington and there is little excuse for the policy of unrelenting pessimism displayed by business executives. As *The New York Times* remarks:

> The theory is abroad in Wall street that a revival of business confidence may not be far away. It is argued that the business man is tough (in the best sense of that word) and that the urge to make a profit is well-nigh irrepressible. Men accustom themselves to hazards and uncertainties, if only the variety of these uncertainties is not changed too often. If, as is being said, Washington is disposed to avoid innovations, there is a possibility that business men will find a way to expand their activities in spite of many elements in the politico-economic situation which have distressed them and which are not much changed.

Based on past experience in bear markets, June is the logical time of year for a turnabout in stock prices and business. It is hoped that the present year will prove no exception to the rule, but it may not occur unless business men, large and small, show more courage in planning for the future than they have recently indicated. The production and repair of durable goods such as homes, automobiles, and factory buildings form a large part of our modern economic activity. Administration "spending" can only partially fill the vacuum created by the decision of business men to cut their maintenance and expansion programs "to the bone." It is up to the average business man, regardless of his continued distrust of government policies or his desire further to chasten labor and government leaders, to reconsider his future program

with the idea of stimulating employment, restoring morale, and checking the disastrous decline in public buying power.

Utility Taxes Up $44,000,000 in 1937

THE tax bill of the private utility companies operating in the United States amounted in 1937 to $330,000,000, an increase of $44,000,000 over 1936, the Edison Electric Institute has reported in its annual statistical bulletin. Despite an increase of $114,000,000 in gross operating revenues, operating income of these companies rose only $5,000,000, or 1½ per cent, over the previous year.

The effects of increased operating costs and taxes offset gains in revenue, which in 1937 broke all records and exceeded 1936 by 9.2 per cent. Taxes paid by the utility industry have increased 60 per cent in the last five years.

Fuel costs increased $20,000,000 over 1936, wages and salaries were $25,000,000 higher, and provisions for retirement, depreciation, and maintenance advanced by $30,000,000.

Utility Stocks Lead Market Recovery

UTILITY stocks, while still at depressed levels compared with previous years, have now recovered a substantial part of their decline from the January highs, though industrial and rail stocks are still well below their earlier levels. SEC Commissioner Hanes' optimistic statement regarding coöperation between the administration and private utilities, before the investment bankers' group at Pittsburgh, resulted in a sharp advance in utility stocks on May 6th, with indications that the advance would continue unless some untoward development should check reviving confidence in this undervalued group.

As indicating the character of this sudden market interest, seven out of ten of the most active stocks on May 6th were utilities — Consolidated Edison, United Corporation, North American, Electric Power & Light, Commonwealth & Southern, Engineers Public Service, and American Power & Light. High-grade utility bonds also continued their upswing, registering a 1938 high for the Dow-Jones average of 104.18 compared with 103.30 a year earlier.

Wall street may have placed too optimistic an interpretation on Mr. Hanes' remarks, as they were assumed to imply an early settlement of the TVA difficulties. However, there is little doubt that utility earnings (with a few exceptions) are making a far better current showing than those of most other industries; and hence utility stocks, regardless of any rapprochement with the administration, are entitled to make a stronger showing than many other stock groups.

Plans for Utility Financing Revived

THE success of the Consolidated Edison and General Foods financing has encouraged investment bankers and utility executives to attempt a more active program of refunding operations than anticipated earlier this year. Among the proposed issues are $15,000,000 Detroit Edison financing, $35,000,000 Toledo Edison Company bonds, $16,000,000 Indiana & Michigan Electric bonds, and $73,000,000 Commonwealth Edison bonds ($33,000,000 first mortgage and $40,000,000 convertible debentures). Puget Sound Power & Light Company (subsidiary of Engineers Public Service Company) has filed $7,000,000 first and refunding 6s of 1950 with the SEC. Ohio Power Co. is said to be planning a refunding operation. Smaller financial changes include the following:

New York State Electric & Gas Corporation is issuing to the Chase National Bank a $2,000,000 4 per cent serial note. Kansas Electric Power Company, a subsidiary of Middle West Corporation, proposes sale of $1,000,000 first mortgage 3½s to an insurance company and 7,000

shares of common stock to Middle West, proceeds being used to complete a generating station. Central Maine Power Company and Public Service of New Hampshire, subsidiaries of New England Public Service Company, propose $1,000,000 and $750,000 bond issues, respectively, together with common stock financing through the parent company. The bonds will be sold to insurance companies and the proceeds used to reduce bank loans.

SEC Eases Rules

THE SEC has adopted a new rule permitting utility holding companies to invest free surplus funds in a diversified list of securities. This should help to promote the program of simplification and integration envisaged by the Public Utility Holding Company Act of 1935, for if some of the quasi holding companies take advantage of the liberalized provisions they should eventually revert to investing companies.

The new rule, entitled 9C-4, permits a registered holding company or subsidiary to apply to the SEC for approval of an investment program, thereby giving the applicant power to purchase securities in accordance with the program free from all other requirements under §9.

If the proposed program is to include any purchase of securities of a registered holding company or of any public utility company, the applicant must specify the name of such company and the maximum amount of each class of the securities of that company which it may choose to include in its investment program. The principal limitation of the new rules is that purchases must be limited to amounts which would not result in any further concentration of control.

The investment program is, however, limited to the use of funds not required for working capital, debt retirement, etc. The program should exclude

1. Securities issued by any company in the same holding company system as the applicant.

2. Securities issued by any company which would be, after the acquisition by the applicant, in the same holding company system as the applicant.

3. Securities issued by a company in which the applicant has, or will have after the acquisition, 5 per cent or more of the outstanding voting securities.

4. Securities of an investment company or for any investment trust.

5. No security which is not readily marketable.

In compliance with the request by President Roosevelt to consider simplification of regulations and expedite new financing, particularly for small companies, the SEC has announced modification of its requirements for registration of securities under the Securities Act of 1933. The liberalized rules apply only to established concerns with total assets under $5,000,000 which have shown a profit in at least one of the past five years—thus ruling out promotional enterprises. A special unit was set up by the SEC to aid such registrants. An audited statement will be required only for the last of the three years for which figures are required, and historical information may also be curtailed.

New York City to Raze Elevated Lines?

NEW York city has offered to buy the Sixth Avenue Elevated (for razing) at a price of $12,500,000 of which $3,874,475 would be paid in cash, with back taxes covering the balance. Real estate experts hold that over a 10-year period following demolition, real estate values on Sixth avenue should increase by $275,000,000, which presumably will more than compensate the city through increased tax collections. The agreement must run the gauntlet of the Federal courts, the transit commission, and the Board of Estimate, but it seems generally agreed that the proposal represents a happy solution of at least a portion of the city's traction problems. Manhattan Railway Company recently filed under 77B, the parent Interborough Company having filed some time ago. The city had

weakened the bargaining position of the Manhattan bondholders by posting the tax liens for sale, and preliminary moves by the company to obtain an RFC loan met with little success.

Samuel Untermyer has prepared a proposed constitutional amendment for consideration by the state constitutional convention, to permit New York city to issue bonds for the purchase of the transit systems without regard to the city debt limit, which has been a handicap in recent years. Mr. Untermyer represented the city in earlier unification plans, being succeeded by Messrs. Seabury and Berle in last year's negotiations.

New York city has advertised for public sale its $5,310,000 tax liens held against street car companies controlled by a B.-M.-T. subsidiary. The unpaid taxes cover the period 1893-1924, plus interest, and presumably the revival of this antiquated issue again reflects the mayor's desire to put the local tractions "on the spot" and force better unification terms.

Status of Standard Gas under the Utility Act

THE reorganization plan of Standard Gas & Electric Company was approved by Federal Judge Nields on March 5th and will probably be consummated in the near future. However, the plan does not substantially affect the character of the system set-up and a considerable revamping of subholding companies and regrouping of territorial interests may ultimately prove necessary to bring the system into harmony with the Public Utility Holding Company Act.

Standard Power & Light Corporation (now top holding company) owns 40,751 shares of prior preference stock and 1,160,000 shares (a majority) of common stock of Standard Gas & Electric Company. The $24,000,000 debenture bonds have been assumed by Standard Gas and under the reorganization plan will be exchangeable for Standard Gas bonds, so that the 34,054 shares of $7 preferred stock are now the senior security. The preferred stock is currently quoted on the New York Curb at 8-21 despite an estimated current liquidating value (based on quotations for Standard Gas stocks) some eight or ten times larger.

In 1933 Standard Power & Light exchanged some of its own preferred stock for that of Standard Gas & Electric prior preference. If such an offer were renewed, with resulting cancellation of the preferred, the large equity in Standard Gas common (plus cash and other assets) would be available for distribution to holders of Standard Power common stocks, currently selling around ⅛ as compared with 3¼ for Standard Gas. It would seem a relatively easy matter to liquidate Standard Power & Light Company whenever stockholders wish to do so, although it may be necessary to await settlement of the Delevan litigation in which the company is involved.

Disregarding Standard Power & Light, Standard Gas & Electric Company is in effect the top holding company for this utility system with assets approaching the billion dollar class. It controls a large number of operating companies, in many cases through intermediate holding or operating companies. In one or two cases these corporate relations descend by as many as five stages before the "lowest" company is reached. One example is the following (percentages indicate extent of voting control):

> Standard Gas & Electric owns 40% of Northern States Power (Del.), 100% of Northern States Power (Minn.), 100% of Minneapolis General Electric, 100% of St. Croix Falls, Wis., Improvement, 100% of Western Wisconsin Power Co.

In extenuation of these relationships, several facts may be mentioned. The set-up was not, in the writer's opinion, due to any desire to obtain and exploit a bare majority control of each company. The two lowest companies in the list are very small and unimportant. The reason for the two Northern States Power companies was probably the double liability for common stocks in Minnesota. Minneapolis General Electric has served the municipality about fifty years or more and has valuable franchise rights. It was

necessary to form the Wisconsin subsidiary, it is understood, because "foreign" companies cannot operate utilities in that state.

LIKE other large utility organizations, the management has been attempting to weed out obsolete corporate relationships, but the process is necessarily slow and has been delayed by Standard Gas & Electric's being under the jurisdiction of a Federal court since the end of 1935. The fact that the great majority of subsidiaries are fully controlled should simplify the future task of realigning the system.

Geographically, Standard Gas seems somewhat vulnerable under the "death sentence." Electricity is served to such widely separated cities as Pittsburgh, Minneapolis and St. Paul, Louisville, Oklahoma City, San Diego, Pueblo, Oshkosh, Fargo (North Dakota), and Casper (Wyoming). About two-thirds of total revenue is from electricity, 18 per cent from gas, 14 per cent from transportation, and one per cent from steam, water, ice, and oil services (not including the important Deep Rock Oil Corporation, now in reorganization). The principal operating systems in the Standard Gas system are

	Per Cent Interest
California-Oregon Power Company	56
Deep Rock Oil & Refining Company	100
Empresa de Servicios Publicos de los Estados Mexicanos, S. A.	100
Louisville Gas & Electric Company	94
Market Street Railway Company ..	40*
Mountain States Power Company ..	45*
Northern States Power Company (Del.)	40*
Oklahoma Gas & Electric Company	53
Philadelphia Company	97
San Diego Consolidated Gas & Electric Co.	61
Southern Colorado Power Company ..	64
Wisconsin Public Service Corporation	100

*Not included in consolidated financial statements.

It may prove necessary eventually to break up the control of these systems into five or six geographical groups. Thus, California-Oregon Power Company, Market Street Railway Company, San Diego Consolidated Gas & Electric Company, and Mountain States Power Company might compose one group; Southern Colorado Power Company another; Louisville Gas & Electric Company, and Oklahoma Gas & Electric Company, a third; Northern States Power Company (after eliminating the Delaware holding company) might be affiliated with Wisconsin Public Service Corporation; and the important Philadelphia Company would constitute a separate eastern group. Minor questions would still remain, but this will serve to outline the geographical problem.

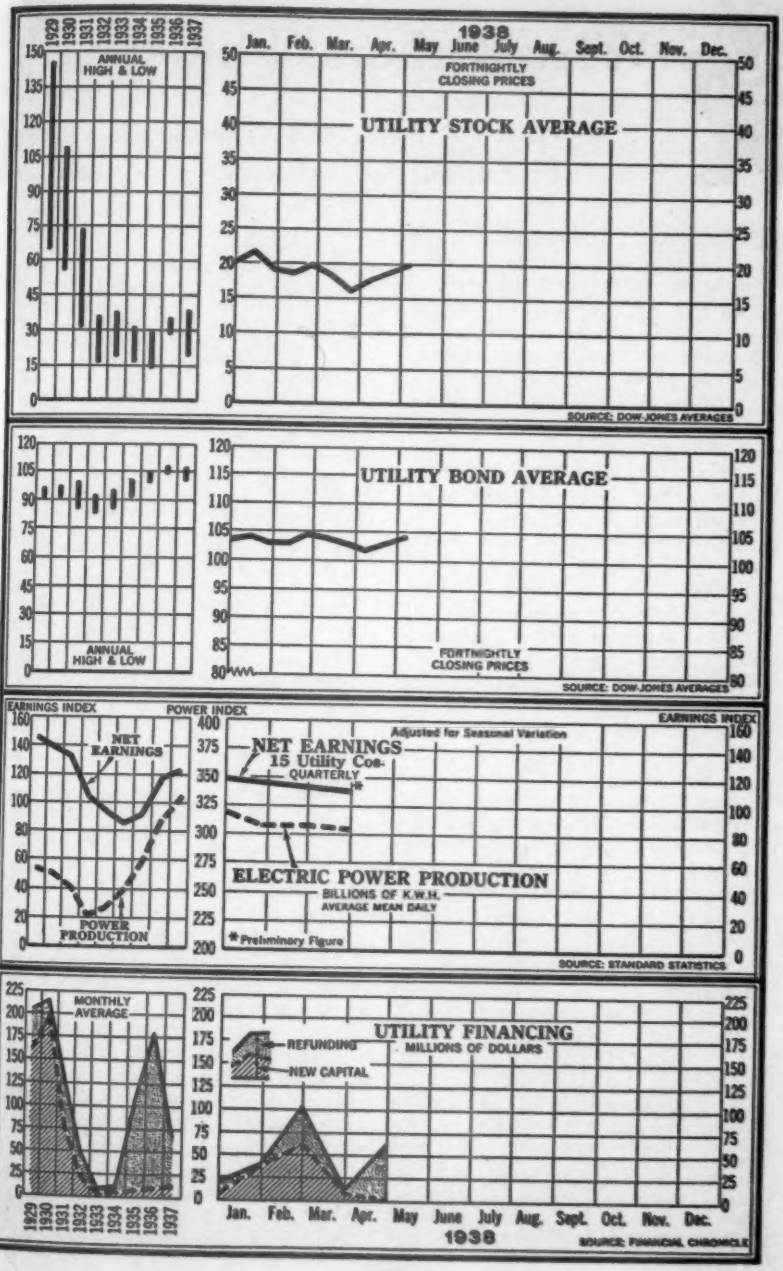
Corporation Notes

HUDSON & Manhattan Railroad has avoided a strike of trainmen by a last-minute concession on wages, details of which are being settled by a joint committee.

Cities Service stockholders ratified the company's proposal to reduce 37,804,394 shares of common stock to 3,745,567. Par value of the new stock was fixed at $10, instead of the former no par value, but stated value in the balance sheet was reduced from $187,278,350 to $37,455,670, the reduction being used to write down certain assets.

Standard Gas & Electric Company has announced a $33,979,000 construction, renewal, and replacement program for 1938, approximately the same as in 1937.

President Zimmermann has assured stockholders of United Gas Improvement Company that "if nothing unforeseen happens" the company will be able to continue its present $1 dividend rate throughout the current year. While he pointed out that a reduction in the dividend rate on Public Service Corporation of New Jersey from $2.40 to $2 (the possibility of which was recently indicated by President McCarter) would reduce the earnings of U. G. I. by about $900,000, he indicated that this loss—only about 4 cents a share—could be made up from surplus if necessary.


1938
ANNUAL HIGH & LOW
FORTNIGHTLY CLOSING PRICES
UTILITY STOCK AVERAGE
SOURCE: DOW JONES AVERAGES
UTILITY BOND AVERAGE
ANNUAL HIGH & LOW
FORTNIGHTLY CLOSING PRICES
SOURCE: DOW JONES AVERAGES
EARNINGS INDEX
POWER INDEX
NET EARNINGS
POWER PRODUCTION
Adjusted for Seasonal Variation
NET EARNINGS
15 Utility Cos.
QUARTERLY
ELECTRIC POWER PRODUCTION
BILLIONS OF K.W.H.
AVERAGE MEAN DAILY
*Preliminary Figure
SOURCE: STANDARD STATISTICS
MONTHLY AVERAGE
UTILITY FINANCING
MILLIONS OF DOLLARS
REFUNDING
NEW CAPITAL
SOURCE: FINANCIAL CHRONICLE

What Others Think

A Nonexpansion Policy and The Electric Industry

We have had a number of new theories of political economy brooded and hatched by the last depression, which challenge the attention of the utilities. One of these is the theory which calls into question our very basic principle of capital investment for the expansion of national productive capacity. This theory is set forth by an able exponent, the Reverend Msgr. John A. Ryan, of Catholic University, in an address reprinted in the *Congressional Record* by Representative Kopplemann of Connecticut.

Msgr. Ryan's nonexpansion theory concerns the electrical industry principally because it is one of the industries which is expressly exempted. In a word, Msgr. Ryan says that America, generally speaking, does not need further plant expansion. He would have us embrace a policy of industrial birth control. We have enough banks, more than enough railroads, more than enough factories. The surplus produced by those we now have plague us into periodic depressions. But electricity and housing, says Msgr. Ryan, are two exceptions. These two can and should continue to absorb more investment without risking the danger of "overproduction, overexpansion, and reckless speculation." Msgr. Ryan stated:

> Apparently there are only two fields that could profitably absorb more investment. These are the electric power industry and housing. If the utilities reduced their charges to a fair level they would undoubtedly be justified in expanding their plants and equipment. If private capital were so organized as to build houses on a large scale it might be justified in expending $4,000,000,000 there in the next two years.
>
> Down to the beginning of the great depression investors and business men generally proceeded on the theory that if goods are produced they will somehow get sold; that the instruments of production can be profitably expanded indefinitely; and that no systematic measures need be adopted to provide consumers with sufficient purchasing power to buy the goods. In their adherence to this naïve theory the business men were aided and abetted by the majority of economists. As examples, I would cite the names of Jean B. Say, David Ricardo, and John Stuart Mill in the first half of the last century, and J. Lawrence Laughlin and Alvin H. Hansen in the present decade. As a consequence of this stupid misreading of the facts, our productive capacity became so overexpanded that our productive plant was 20 per cent idle in our year of greatest prosperity, 1929, and for several years immediately preceding. During this period we had an average of between two and three million unemployed persons. Nor is this the whole story. In 1929 Americans saved some $15,000,000,000, but they were unable to find a place for more than five billions in new instruments of production and in mortgages. The other ten billions were wasted in various forms of unproductive financing and in various kinds of speculation. The foregoing statements are taken from the volumes published within the last few years on income and economic progress by the Brookings Institution. The reason why only five of the fifteen billion dollars of savings found productive investment in 1929 was the obvious fact that the products of additional capital instruments could not be profitably sold.

It necessarily follows that Msgr. Ryan takes no stock in the plea of business that it could go forward if the government would not hold it back with punitive reforms. He believes that the current recession was caused not by the lack of confidence, nor by excessive taxation, but by the relapse which followed the temporary spurt in business activity stimulated by such Federal spending as the soldiers' bonus distribution and WPA relief. The result, he says, was inevitable.

> It was inevitable because of the chronic disproportion between saving and spending. This disproportion has existed for the last fifty years, but it has greatly increased since the beginning of the present century. In the

volume of America's Capacity to Consume, the Brookings Institution attributes the recent increase in the rate of saving to the notable increase in the national income which has enabled the population to save more, and particularly to the relative increase in the incomes of the upper classes. Too much of the national income or national product is saved and too little is consumed. Too much goes to capital and too little to labor and the farmers. Three-fifths of the savings in 1929 were made by that 10 per cent of the population having incomes of over $5,000. Of course, almost all the savings of this 10 per cent came out of interest and dividends. If the members of this group had received considerably less interest and dividends, the total savings of the country would have been smaller, the excessive capacity for production would have been lower, the incomes of the wage earners would have been higher, and their volume of purchases larger. Thus more business would have been done, a smaller productive plant would have been operated more nearly at full capacity, and there would have been less unemployment. Because these changes were not made, the recovery from the great depression was slow and was constantly subject to setbacks. The present decline is the accumulated effect of the unbalanced distribution of income and purchasing power.

The remedy is obvious. For the safety of our industrial system, for the sake of continuous operation of our industrial plant, if not for the sake of our underpaid and unemployed, we must bring about a better distribution of purchasing power and a better distribution of the national income as between capital and labor.

MSGR. Ryan's remedy for this situation brought on by false spending would be to raise labor's share in the national income. In 1929, he said, labor received 65.5 per cent, and in 1936, 66.5 per cent, with 3.3 per cent of the latter coming from the government in the form of work relief. Msgr. Ryan would raise labor's share to somewhere between 70 and 75 per cent, with a corresponding diminution in capital's share of the national income.

And how is this to be accomplished? The answer should sound familiar to the utilities. First, higher wages effected through a combination of organized union pressure, Federal wage regulation, and "voluntary action by social-minded employers." Rates of interest must be reduced through "prudent refinancing," possibly with the assistance of the RFC. Finally, we must eliminate "monopoly profits" and have "government competition with concerns that cannot be curbed by regulation."

Thomas F. Woodlock, former Interstate Commerce Commission member, writing in *The Wall Street Journal*, makes the following interesting comment on Msgr. Ryan's proposal:

> Granting the logic in the scheme, one may wonder whether its advocates have fully thought out the consequences of its application and are ready to accept them. The business cycle is the price which the country has paid for the living standard which its *employed* workers have enjoyed and enjoy today as compared with workers in other countries. That standard has resulted from the highly dynamic process of trial and error which has characterized American industry for at least two generations. The "trials" have raised the standard, and the "errors" have been paid for by the capitalists who made them and by the workers who were temporarily unemployed in the depressions. We would not have the standard without the trials; without the trials we would not have the errors. Putting it in another way, if we replace the dynamic process of past generations by a static process it is not easily conceivable that we can continue to improve the standard in anything like the former degree—if we can improve it at all. As a matter of fact it is extremely improbable that we can continue to maintain it at its present level.
>
> Perhaps the price of plain living is none too high to pay for "security." Perhaps, even, high thinking might come with plain living—who knows? But have we considered the matter of price—and are we ready to pay it? Nothing in the discussion, so far, indicates that we have, much less that we are.

Aside from the merits of these two conflicting viewpoints, it should interest the electrical industry to know that Msgr. Ryan, who has long been prominently identified with the movement for public ownership of public utilities, still thinks that the power business is one of the two remaining major American enterprises wherein new capital is needed and can be gainfully employed.

—T. R. P.

THE PRESENT BUSINESS RECESSION. Address of Rt. Rev. John A. Ryan reprinted in *Congressional Record*. January 12, 1938.

THINKING IT OVER. By Thomas F. Woodlock. *The Wall Street Journal*. March 21, 1938.

REA Grows More Realistic

AFTER inducing numerous farmers to form rural power coöperatives to which have been loaned millions of dollars of Federal funds, the Rural Electrification Authority's active promotion of these projects seems to have discovered that the basic financing plan needs some overhauling. At any rate, it is supposed that REA at least tacitly approves a recent bill introduced in Congress by Senator Van Nuys (D.) of Indiana to amend the Rural Electrification Act. Speaking on his bill, Senator Van Nuys stated:

> My information is that the loans to Indiana electric coöperatives average approximately $300 for each customer signed up. The interest rate is 2.7 per cent and the loans must be repaid in twenty years, which means roughly 5 per cent for amortization. Three per cent depreciation is the government stipulation. That brings the fixed charges to approximately 10 per cent, or $30 for each customer served. In turn that figures $2.50 a month as the fixed cost in the farmer's electric bill. In addition to this $2.50 a month, the subscriber must pay enough to cover the operating cost, bookkeeping, insurance, other administrative charges, and the cost of the electric current. Because, after a searching investigation of the situation, I believe that this estimated $2.50 a month for fixed charges may prove a barrier to successful operation, I, therefore, am asking in my proposed amendment that the farmer be given thirty years instead of twenty years to repay the loans.

THE Senator apparently slipped up in his recollection of the loan term authorized by the present act, which is twenty-five rather than twenty years (which would mean a corresponding adjustment in the interest figures). However, the general idea seems to be to rescue the farmers from burdens of rural electrification loans which might be lightened over a longer span of years.

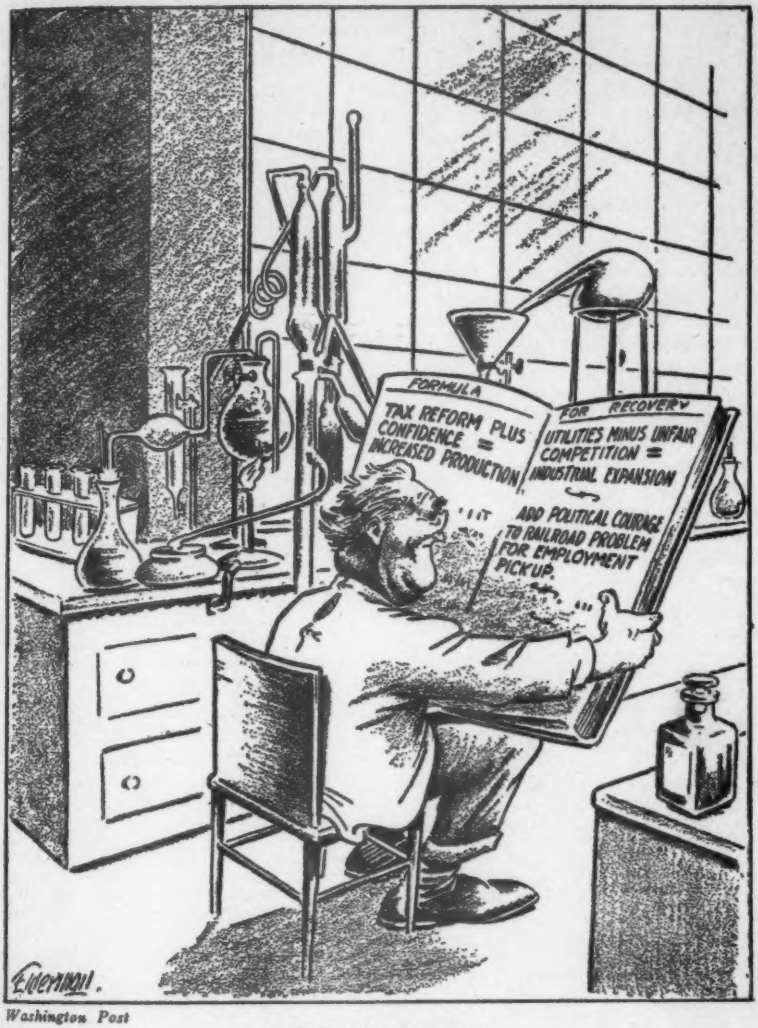
The *Indianapolis* (Ind.) *News* stated editorially on the Van Nuys bill:

> As an emergency measure to reduce the demand charge, thus encouraging more farmers to take the service, the Van Nuys plan is worthy of encouragement. But it should not be regarded as solving the problem. As experts have pointed out, the distribution systems probably will not last thirty years. Since the REA has set up no fund for emergencies, such as sleet storms that might wreck poles and lines, the probability is that the systems will have to be replaced long before they are paid for. The probability is that farmers never will be able to profit by rural electrification as planned by the REA. It is not at this time an economic possibility. They can have this service only with a heavy government subsidy, which means, of course, that the taxpayers will help them to pay their electric power bills.

Then also there is the fear expressed in some quarters that, for political reasons, these loans may never be paid back by the farmers, at least in their entirety, and that as the first step in this direction of outright Federal subsidy in the extension of loan terms, there will come interim moratoriums, and so forth, as happened in the case of some of the earlier western irrigation projects which were supposed to be self-liquidating.

FROM another angle, there is evidence that REA is growing more realistic in its approach toward the problem of making rural electrification a going business. This can be seen in the recent efforts made by REA in the direction of electric load building. Commenting on this editorially as early as last fall, *Electrical World* stated:

> . . . REA is placing in operation six "field-utilization units" to sponsor "load building" on REA rural lines in some 38 states. A crew consisting of a utilization representative, an agricultural electrification specialist, and a home electrification specialist will work anywhere from three to seven states operating from the time REA funds are allotted until the REA loan is repaid.
>
> The step is perfectly logical, and considering results apparently is urgently necessary. But more than that, again the government is tearing a leaf out of the utility industry book. Even a plan book—a portfolio on first steps in load building—has been prepared, and again the question is raised as to whether the service companies in the utility industry were and are performing reprehensible duties after all when the government itself now patterns its organization along the same lines.
>
> The operating policies adopted by utility companies in construction, operation, and load building are no mere whimsy. They



Washington Post

LABORATORY HINTS

have come from years of bedrock experience with the stubborn facts faced by utility management. Nowhere has the best solution of a management problem been more difficult to find than in the riddle of rural service.

The *Electrical World* went on to state that perhaps out of such experiences the Federal government may come to "a new understanding of the practical limits which at present circumscribe rural electrification."

ANOTHER point of view was expressed in an appeal to public agencies to view rural electrification as a matter of farm building, rather than a matter of

line and load building, sounded by George W. Kable, editor of *Electricity on-the-Farm*. Specifically, Mr. Kable's contention is that the public acts under which the Rural Electrification Administration operates overemphasize line building, and use public funds to benefit a comparatively small number of farmers, at the expense of possible rural electrification research and extension work which could promote rural electrification on a sounder basis with benefit to a much larger number of farmers. He also maintains that the U. S. Department of Agriculture, which has facilities for the administration and conduct of research and extension work, should logically have the responsibility and administration of funds provided for this work because the major problem therein is agricultural.

Commenting editorially on Mr. Kable's contention, *Agricultural Engineering* stated:

> Without presuming authority on the public policy problem as to what should be done about it, we are inclined to agree with Mr. Kable that, technically, rural electrification is largely an agricultural problem. It is the problem of using electricity as a tool to improve farm living and the farmers' economic service of production. When the majority of those farmers who already have electric service available can be shown the methods and economy of utilizing it fully, and when it has become part and parcel of their life and work, rather than an appendage, kilowatt-hour consumption will be greatly increased, and lower equipment costs, lower rates, and more lines can be justified, and more individual units will come into use beyond the reach of power lines.
>
> Just enough farmers are making extensive profitable use of electricity to show that the majority of others having current, and having been subjected to the same load-building salesmanship, still lack some information, understanding, or incentive necessary to place them in the same farming class. They need the help which research and genuine educational effort can give to start them using electricity profitably, not only as an improvement on the kerosene lamp, but in all of their operations where light, power, heat, or other effects of electricity might be used to save labor, reduce waste, improve the product, reduce hazards, improve working conditions, or otherwise increase their capacity to produce salable goods or services.
>
> Many possible applications have proven practical under certain circumstances. The limits of their practicability need to be defined and made general farm knowledge. Additional applications should be developed to meet agricultural needs. Agricultural and business principles of the farm use of electricity need to be worked out and clearly worded. Rural electrification crosses all branches of agricultural science, and finds usefulness in most types of farming and farm operations.

In other words, in the opinion of *Agricultural Engineering*, the bottle-neck in rural electrification is not in any lack of technical mastery of technical phenomenon, nor in any industrial reluctance to provide the means of generation or distribution to points where usage will justify cost. It is in engineering the application of rural electrification to modern functional agriculture. In other words, agriculture itself is the bottleneck which requires that rural electrification should be applied towards engineering electrical power into an integral place in farm life and farm work.

—T. R. P.

REA Financing. Editorial. *Indianapolis News*. March 18, 1938.

REA Turns Its Eyes toward Load Building. Editorial. *Electrical World*. October 23, 1937.

The Bottleneck in Rural Electrification. Editorial. *Agricultural Engineering*. January, 1938.

Empire State Report on Regulation

Pointing out that it supervises 863 corporations, municipalities, and individuals serving 12,000,000 people with $7,000,000,000 of utility business, the report of the public service commission of New York state for 1937 was received with interest by utility circles. Basing an editorial on the value of the volume, the *Rochester Times-Union* says it is "not a dry-as-dust compilation. Every word is

interesting, important, and affects the pocketbooks and lives and safety of New York's residents. Yet it is safe to say that it will receive scant attention except from public utility executives and attorneys."

For one thing, the report says the trend of gas and electric corporations to simplify their corporate structures became more marked in 1937. The commission again says it is strongly against pyramiding into holding companies without any physical property other than that indirectly controlled through ownership of stock of operating companies, and that there are really few instances where this is necessary.

Of refunding corporate obligations, it declares that in the three years just completed the commission has approved almost $1,000,000,000 in new bonds averaging from 3¼ to 4 per cent interest charges which replaced previous issues ranging from 4½ to 6 per cent. When old issues are retired, all the unamortized debt discount and expenses must also be retired. This is not the rule in all states, says the report, but has been found to be acceptable to the corporations under its jurisdiction. The commission has cut costs of underwriting from 5 per cent to 2 per cent and has ruled that underwriters shall not shift to the issuing company any costs of the underwriting.

The commission says it hopes to have ready before long, in the cases of a large number of companies, complete facts on the original cost of properties used and useful in the public service. This will aid it in fixing temporary and permanent rates. The report also says that accounting systems have been unified for a majority of the electric, gas, water, and steam companies.

EIGHT instances where it claims legislation is needed are described by the commission. Governor Herbert H. Lehman and the public service commissioners want the "yardstick" system used in limiting rates charged by municipalities to the actual cost of rendering services, so that consumers will not be unfairly burdened with extra costs. Another law to force submetering companies under the jurisdiction of the commission is asked. That body likewise seeks authority to fix methods of accounting for depreciation, for determining whether depreciation reserves are adequate, and, if not, how such inadequacy shall be remedied. It also seeks a law forcing utilities to give any customer the lowest possible rate applied to his service, and a statute is asked requiring the filing and approval of all contracts, especially where they are between concerns having interlocking directorates.

The commission wants a law passed altering the present statute allowing it to charge one per cent of the operating revenue for investigations and valuations of companies to one for 1¼ per cent of operating expenses over a 3-year period, saying its proposal would cover costs in cases involving small companies which at present cannot be fully investigated.

Other changes in the state law requested would make uniform the keeping of a single set of books by companies, and one to make all rates effective thirty days after filing unless objection in any instance is raised.

During the year, new rates for gas, electricity, telephone, water, and steam were issued whereby $10,866,000 was saved consumers, and refunds from previous years of $2,235,000, tied up in litigation, were repaid the users of these utilities. Further improvement in rate structures is reported to have been made, and the commission is now seeking uniform rates in adjacent or similar territories. Many municipal electric plants are reported to have cut their charges for the first time in many years.

A GENERAL housecleaning of the capital and corporate affairs of several companies is said to have resulted from utility mergers in the past two and one-half years. Forty-one companies have been brought together into five large and two smaller concerns, the larger ones being Consolidated Edison, Central New York Power, Buffalo Niagara Electric, New York State Electric & Gas, and

Chicago Tribune

WEAN THE CALF AND GET MORE MILK

Long Island Lighting. More than $86,000,000 was written out of the fixed capital of the combined companies, of which sum $70,000,000 was from the Consolidated Edison System alone. It is estimated that an annual saving to consumers of $7,500,000 has resulted from these consolidations. But before this union of divergent interests is allowed, the companies must show that consolidations will favorably effect economies in operation, improve the service, extend power facilities of the stronger to the weaker units in the proposed systems, simplify rate schedules and reductions wherever feasible, eliminate intermediate companies, simplify security structures, and increase facilities for financing com-

pany requirements. Complete details of each merger permitted or disallowed are given in this 1937 report.

In 1937 the commission authorized $258,654,237 in securities for the utilities within its jurisdiction, bringing up to $933,259,400 the total of its authorizations during the past three years. These involved refinancing of company obligations in connection with mergers, consolidations, and acquisition of property, as well as redemption of securities and refunding at lower interest rates new issues for construction and other capital purposes.

The commission considered 92 applications for new capital, of which 73 were approved and 19 denied. Nearly $100,000,000 in loans was allowed to be refunded so that companies could take advantage of cheaper money rates.

It is pointed out that 53 per cent, or 87,000 of the farms in New York state are now electrified, and that 20,000 new customers were added in 1937. This is the first time that more than half the farms in the Empire State have had electricity.

The report gives voluminous details as to the railway, omnibus, and traction problems and conditions in New York state. The car loadings, as an instance, were larger by 5½ per cent (37,992,928) than in 1936 and were the greatest volume in any year since 1930. Traction losses in business continue, as they steadily have been recording losses since 1927.

Relative to litigation and court decisions, the report proudly proclaims that during the year the commission was upheld on all important matters contested by the utilities in the state courts. It points to the fact that the public service commission was upheld in the matter of the straight-line method of depreciation accounting in the valuation of company property in rate and other proceedings. The report reviews in detail the litigation in both Federal and state courts, and is exhaustive in presenting special features of many decisions.

—T. R. P.

ANNUAL REPORT of The Department of Public Service, New York Public Service Commission, for 1937. Albany, N. Y. 1938.

Notes on Recent Publications

IMPORTANT PUBLIC UTILITY DECISIONS BY THE SUPREME COURT AND THEIR PUBLIC IMPLICATIONS. By John Bauer. *The Journal of Land & Public Utility Economics.* February, 1938.

KEEP YOUR EYE ON THE BALL. An analysis of the TVA power controversy by Judson King, Director, National Popular Government League, Takoma Park Station, Washington, D. C. *Bulletin No. 183.* March 17, 1938.

NEBRASKA'S HYDROELECTRIC PROJECTS. By Roy Page. *Omaha World-Herald.* December, 23, 1937.

POWER AND FLOOD CONTROL. Address by Hon. Phil Ferguson, of Oklahoma, before the National Rivers and Harbors Congress. Hotel Mayflower, Washington, D. C. January 21, 1938. Reprinted in *Congressional Record,* February 21, 1938.

PUBLIC UTILITY FINANCING IN THE FOURTH QUARTER AND THE YEAR, 1937. By E. D. Ostrander. *The Journal of Land & Public Utility Economics.* February, 1938.

TAXING THE WATTS—UNIT OF POWER IS SELECTED AS YARDSTICK FOR PROPOSED TAX ON BROADCASTERS. *The New York Times,* February 27, 1938. Reprinted in *Congressional Record,* March 4, 1938.

THE COLUMBIA RIVER. Radio address of Hon. Nan Wood Honeyman, of Oregon, March 1, 1938. Reprinted in *Congressional Record,* March 4, 1938.

THE CURRENT RECESSION AS REFLECTED IN WISCONSIN KILOWATT-HOUR SALES. By William H. Evans. *The Journal of Land & Public Utility Economics.* February, 1938.

THE EARLY HISTORY OF ELECTRICAL COMMUNICATIONS. By Leslie Bennett Tribolet. *Air Law Review.* January, 1938.

THE "WASHINGTON PLAN" OF SLIDING SCALE REGULATION OF UTILITY PROFITS. A paper delivered by William A. Roberts before Section on Public Utilities of the National Lawyers Guild, Washington, D. C. February 20, 1938.

The March of Events

Light Plant Bid Offered

THE Tennessee Valley Authority and the city of Knoxville on May 12th offered $7,500,000 for the electric properties of the Tennessee Public Service Company. The bid was sent to Paul B. Sawyer, president of the National Power and Light Company, intermediate holding company for the Tennessee Public Service, which serves Knoxville and vicinity. National Power and Light's directors were given until May 18th to act on the offer.

The joint offer, approved by TVA's directors, did not include the company's Watervile-Kingsport transmission line and the transportation system serving Knoxville. Neither did it include any of the Tennessee Public Service Company's cash reserves, capital, or accounts receivable.

The offer was about $1,500,000 more than the TVA agreed to pay for the properties in 1934, when Tennessee Public Service and the TVA entered into a contract for the sale but litigation blocked the deal. Mayor Mynatt of Knoxville said "conditions have changed a great deal since then. A lot has happened in four years."

Under the arrangement agreed upon, the city would buy the properties inside Knox county and the TVA would purchase those outside the county. Negotiations between the city and TVA and the National Power and Light have been carried on for several months while the city continued with the construction of the first unit in a municipal system.

Utilities Bid for Peace

DEFINITE signs of peace in the long drawn out holding company controversy between the Federal government and the private utilities appeared on May 10th when it was disclosed that five of the nation's leading utility holding company executives, in conjunction with fourteen of the largest utility holding companies, had formed a committee to confer with William O. Douglas, chairman of the Securities and Exchange Commission, in an effort to bring about "sound and constructive solutions" of the problems confronting the industry.

In a letter released jointly on May 10th by J. F. Fogarty, president of the North American Company, and C. E. Groesbeck, chairman of the board of the Electric Bond and Share Company, and which was sent to Mr. Douglas May 5th, it was explained that the committee was formed to present views to the SEC from time to time as the whole utility picture passes in review.

The letter revealed that, following a conference with SEC officials on April 20th, Messrs. Fogarty and Groesbeck returned to New York and called a meeting of various leading utility executives, at which fourteen holding companies were represented. Final decision and the selection of a representative committee was made on May 5th, whereupon Mr. Douglas was formally notified.

To expedite progress in working out a program of coöperation with the SEC concerning the provisions of the Public Utility Holding Company Act of 1935, according to the letter, the following executives were selected as a committee:

Wendell L. Willkie, president of The Commonwealth & Southern Corporation; John E. Zimmermann, president of the United Gas Improvement Company; P. L. Smith, president of the Middle West Corporation; Mr. Fogarty and Mr. Groesbeck.

President Roosevelt was said to have expressed gratification when informed that the holding companies had offered coöperation with the SEC in working out a program for compliance with the Holding Company Act.

President Surveys Utilities

PRESIDENT Roosevelt on May 10th disclosed that he had directed a survey to be made of the adequacy of electric power for national defense purposes, and of the possibility of greater coördination of existing facilities in time of war. After a conference on the subject with Basil Manly, vice chairman of the Federal Power Commission, and Louis Johnson, Assistant Secretary of War, the President said the study would be the first ever undertaken in this country.

Explaining that the survey was being approached from the military point of view, the President illustrated the importance of the matter by recalling that if anything happened to the power plants of the District of Columbia in time of war there would be no way for this city to borrow power from the city of Baltimore, nor could the capital give assistance to that city.

Mr. Johnson said the power survey was part of the industrial mobilization program of the War Department.

Rankin Demands REA Fund

REPRESENTATIVE Rankin of Mississippi, chairman of the House power bloc, has announced intention of the bloc to insist on the setting aside of $200,000,000 of the $4,512,000,000 spending-lending total to promote development of rural electrification coöperatives.

He said the $200,000,000 should be made available to coöperatives in the form of loans and grants, similar to those extended by the Public Works Administration on a 45-55 basis.

Rankin said representatives of "country" districts should guard against too much of the $4,512,000,000 going to the cities. He stated: "We are not going to stand by and let them spend billions of dollars in the big cities while the rural sections get left out."

Proposes States Unite

RAY E. Lee, attorney general of Wyoming, suggested recently in a letter to Colorado's attorney general, Byron G. Rogers, that the western states unite "in self-defense to plan action against unprecedented Federal intervention" in the dispute over the waters of the North Platte river.

Lee suggested that a conference of attorneys general of the western states be called to consider the petition of the Federal Reclamation Bureau to intervene in the 3-state controversy over the waters of the North Platte.

FPC Rate Orders

THE Federal Power Commission on May 5th vacated its order of January 13, 1938, suspending a rate schedule of the Kentucky Utilities Company which provided for an increase in the rates and charges to be assessed and collected for electric energy furnished to The Tennessee Electric Power Company and discharged its order of March 8, 1938, setting hearing on the suspended schedule.

The commission's action followed submission of data and information by the Kentucky Company subsequent to the order setting hearing indicating that the rates and charges provided for in the suspended schedule are in substantial conformity with the cost of rendering the service and do not exceed reasonable rates and charges for the service therein provided. The commission's new order permitted the rates and charges under the suspended schedule to become effective as of January 13, 1938, and terminated all proceedings relating to the suspension.

The commission on the same day also adopted an order terminating the inquiry instituted under its order of February 15, 1938, against the Gulf States Utilities Company, the company having filed supplemental rate schedules removing the undue discrimination found by the Federal Power Commission to exist with respect to rates and charges assessed and collected from certain municipalities and companies.

By reason of the removal of the undue discrimination specified in the commission's order of March 28th, the company was said to have satisfied the requirements of the show-cause order.

The company was ordered to show cause why electric energy should not be sold to the Gulf Public Service Company at DeQuincy, La., the Louisiana Power and Light Company, and the communities of Abbeville, Broussard, and Erath, La., under the same schedule applied for such sale to the communities of St. Martinsville and Vinton, La., the Youngsville Sugar Co., Inc., Louisiana Public Utilities Co., Inc., and the Community Public Service Company. It was also asked to show cause why various credits for stand-by service should not be made uniform or eliminated and reflected in the rate charged and applied to all customers uniformly.

Ross Urges Tax

THE Bonneville administration favors a fair local tax on the gross revenues of districts and municipalities which will purchase power from the government project and is not in favor of the property tax on utilities and utility districts now in vogue in Oregon.

Administrator J. D. Ross made that plain recently to a group of about forty Oregon and Washington men who represented people's power districts, municipal power plants, and granges. The conference was held at Portland in the Bonneville offices. Mr. Ross said:

"Personally, I would like to see the power companies also assessed on a gross revenue basis. Bonneville doesn't want to interfere in saying what the people in districts should tax themselves, but it does want to say, in the interests of the people, that taxation shall not rise above a certain amount."

The Bonneville administration will guard against the "unfairness" evidenced in 95 so-called "tax-free" cities of the East, where all the functions of government are financed by high charges for power, said Mr. Ross.

The contract under which a district or city shall purchase power wholesale from Bonneville will contain a clause providing that only a certain percentage of revenues from resale to consumers may go into taxes and another providing that service must not be given free or below cost for street lighting and other uses, Mr. Ross said.

A "ceiling rate" will be demanded for resale of power, to guard against excessive taxation of power to make Bonneville the load carrier for other governmental functions.

Seminoe Dam Power Rates Set

SECRETARY of the Interior Ickes recently announced tentative rates for the sale of

power to be generated at Seminoe dam, the major engineering structure of the Kendrick reclamation project in Wyoming.

The average of the approved rates for the various classes of energy are: Firm energy (including a demand charge of $1.25 per kilowatt of 30-minute maximum demand per month) 6.3 to 7.4 mills per kilowatt hour, depending upon volume and conditions under which the energy is accepted; firm energy (demand charge waived) 4 to 4.5 mills per kilowatt hour, depending upon the volume and conditions of delivery; secondary energy 1.8 to 2 mills per kilowatt hour.

The cost of the Kendrick project which will be completed next year is estimated at $20,000,000, of which $17,200,000 is to be paid, with interest, by the sale of power.

Engineers Adopt Resolution

THE following resolution was unanimously adopted by the Board of Direction of the American Society of Civil Engineers at Jacksonville, Florida, on April 19th:

"Whereas, Arthur E. Morgan as chairman of the Tennessee Valley Authority requested a thorough investigation of that Authority by the Congress; and

"Whereas, Arthur E. Morgan is acknowledged, both within the United States and abroad as a civil engineer of outstanding ability; and

"Whereas, Arthur E. Morgan, having been a member of this Society for twenty-eight years and having served as one of its vice-presidents, is known intimately by hundreds of its members; and

"Whereas, the Board of Direction of the American Society of Civil Engineers, a Society composed of nearly 16,000 of the recognized leaders of the profession, is holding its regular meeting this 19th day of April, 1938, at Jacksonville, Florida;

"Therefore be it resolved, that this Board, holding the firm belief that it truly represents the opinion of the entire civil engineering profession, hereby declares its highest respect for the personal integrity of Arthur E. Morgan;

"And be it further resolved, that this Board urges upon the congressional investigating committee, which Mr. Morgan requested and which Congress has established, that it make a thorough investigation of such matters as he may wish to place before it and that it give full publicity to all its proceedings."

Puerto Rico Plans TVA Project

A BILL reported pending before the legislature last month would create locally Puerto Rico's first New Deal alphabetical agency—the PRWRA, the Puerto Rico Water Resources Authority.

This administration measure, in which Secretary of Interior Harold L. Ickes is said to be interested, would create a public corporation as a governmental instrumentality of the people of Puerto Rico. Four of the five directors would be government officials, headed by the governor, while the fifth would be the executive director, named by the governor with the approval of two other directors.

The authority would take over the present properties, activities, and obligations of the existing insular agency for utilization of water resources, which has developed government irrigation services, hydroelectric power, and a distribution system. The bill states:

"It being the declared policy of the people of Puerto Rico to develop the water resources of the island for its own disposition in behalf of and for the welfare of its people, all such water resources available for development for any purpose whatsoever are hereby reserved for the purposes of this act."

The bill would empower the authority to acquire and operate revenue-producing undertakings and to continue to completion development of the island's water resources, accept grants and loans from the United States or any agency or instrumentality thereof, and to issue bonds up to $10,000,000 for not longer than fifty years at 5 per cent. These bonds would be tax exempt and the property acquired would be nontaxable.

The public service commission, with general jurisdiction over public utilities, would have no jurisdiction over the authority's property except to inquire into complaints as to the quality and safety of the service rendered.

It was expected the bill would be passed with amendments.

Alabama

Domestic Rate Cut

ELECTRIC current to domestic customers of the Alabama Power Company was cut 5 per cent on May 1st. Under a rate schedule promulgated in October, 1933, designated as the "objective rate," the charge per kilowatt is reduced as consumption increases.

This was the second 5 per cent reduction in recent months and the fifth since the schedule was adopted. It will result in an annual saving of about $30,000 to Alabama Power's residential customers. Since the adoption of the objective rate plan reductions have aggregated more than $925,000 to customers of the company, it was said.

Alabama was the first state to adopt the objective rate plan and since it was put into effect, 34 other states have followed, it was pointed out.

Arkansas

Delay on Gas Offer

THE Little Rock city council utilities committee, meeting early this month to discuss withdrawal of an offer to supply natural gas to the city for thirty years at 15 cents per thousand feet, said its failure to approve the contract within the allotted time was dictated by "common sense."

The proposal was made by J. E. Josey, trustee, Houston (Tex.) financier. He submitted the offer on April 18th and asked a decision by April 25th. The committee had not acted on the offer when it was withdrawn May 3rd by W. R. Manning, Little Rock associate of Mr. Josey.

The attitude of the committee was that it had coöperated in the negotiations for a contract but that the time fixed by Josey and his associates was insufficient.

Mr. Manning said the contract was simply a business proposition and that he felt the committee had sufficient time for study of the plan. He explained that the contract would have been binding on the maker of the offer but no obligation would have attached to the city unless the distribution system of the Arkansas Louisiana Gas Company in Little Rock had been acquired.

Publicity given the proposal was said to have resulted in increased leasing activity in territory where the group was operating. It had been proposed to supply Little Rock with gas from western Arkansas fields, probably in the Clarksville area.

Amendments which the utility committee had asked to be included in the contract, some of which the committee alleged were suggested by Josey's representative, included:

(1) A rate of 12 cents per thousand cubic feet to new and certain old industries in Little Rock; (2) a guaranty of the composition of the gas to be delivered as to quality and heat value, and (3) that Little Rock should have priority on the source of supply over any other users which the makers of the contract might supply.

Rate Reductions Ordered

REDUCTIONS totaling $12,560 annually to electric customers in 61 western Arkansas towns served by the Southwestern Gas and Electric Company were effected recently when the state utilities commission approved the company's revised rate schedules for residential and commercial lighting service.

Classes of customers will benefit by total annual reductions as follows: residential, $8,415; commercial, $3,155, and rural, $990.

Chief Engineer Flanders of the state department of public utilities said the new schedule would effect an overall reduction of 2.2 per cent in the utility company's gross revenue. He explained that the savings would be realized only by customers changed from an "objective" rate to an "additional use" rate, since customers charged on an "additional use" rate in the past had more advantageous rates than those charged on the "objective" rate.

Florida

Rate Hearing Set

THE appeal of the Florida Power & Light Company from the decision of Federal Judge William Barrett upholding the city of Miami in its rate controversy, will be heard before the U. S. Circuit Court of Appeals in New Orleans on June 7th, according to a recent announcement of company attorneys.

The attorneys previously had made an effort to have the case heard during April, but the city attorneys said they were not prepared.

Illinois

Files Notice of Appeal

CHAIRMAN James M. Slattery recently announced that the state commerce commission had filed, through Otto Kerner, attorney general, and Harry R. Booth, counsel for the commission, notice of appeal from the decree of Judge Klarkowski entered on February 4th, under which the Peoples Gas Light and Coke Company was allowed to raise its gas rates approximately $3,000,000 a year. The appeal would be taken direct to the state supreme court as Judge Klarkowski held §68 of the Public Utilities Act unconstitutional to the extent that the section denied the gas company a remedy by way of injunction against the enforcement of the state commission's order of May 21, 1937, denying the company its application for a rate increase.

Booth declared that by the appeal the commission would seek to reverse in entirety the decree entered by Judge Klarkowski and require the gas company to refund all moneys collected and impounded by virtue of the de-

cree and to dismiss the bill for want of equity. He said the commission hoped to establish that §68 of the Public Utilities Act is constitutional and that the company has been deprived of none of its rights under the Federal or state Constitution by the commission's order of last May denying it any rate increase.

Due to the size of the record, consisting of over 10,000 pages of testimony, over 150 exhibits and the many complicated issues of fact and law in the case, it was considered doubtful whether the case would be argued in the supreme court until its next term, which begins in October.

Indiana

Rate Reductions Ordered

NEW rate schedules which do not affect users of less than 60 kilowatts of electricity a month, but afford some reductions to users of larger amounts, were ordered on April 29th by the state public service commission for the Indianapolis Power and Light Company's consumers, effective after May 15th.

The new rates, it was said, would permit the power company to charge more for electric energy in Indianapolis than the same energy costs consumers in neighboring communities. They differ from the old rates for domestic consumers established by the state commission's interlocutory order of March 9, 1937, in the higher brackets only.

Commercial rates were lowered in all brackets by the new order, which followed more than five years of controversy.

In establishing the new rates the commission also determined that "the present fair value, including all elements of value, tangible and intangible, of the property of the Indianapolis Power and Light Company used and useful in rendering electric service to its customers, including all net additions to April 30, 1937, and priced as of June 1, 1937, is $50,000,000."

A fair rate of return, according to the commission's order, is 6 per cent on the $50,000,000 valuation and the company was found to be entitled to net earnings of $3,160,000 annually, including the amortization of the rate case expense.

Kentucky

Gas Rates Reduced

IN coöperation with the state public service commission, the Owensboro Gas Company recently announced a reduction in rates which, it was estimated, would effect a saving to the Owensboro gas consumers of $11,000 annually. The rates became effective May 1st.

With the new rates, the consumer will pay $1.45 for the first thousand cubic feet of gas instead of $1.80 under the old rate. Regardless of the size of their bills, all consumers will participate in a saving. The rates apply to lighting, incidental appliances, cooking, water heating, and power, according to James Gilbert, manager of the Owensboro Gas Company.

Louisiana

Backs Utility Bill

SUPPORT of a bill to limit to $500 a month the charges made by the state public service commission for investigation of rates was announced recently by Governor Richard W. Leche.

The bill limiting the charges to be made against public utilities for the investigation of their rates to $500 a month was an amendment to an act passed in the second extra session of 1934 permitting the commission to assess heavy costs.

Under the law, the late Senator Huey P. Long, as attorney for the commission, with Mark Wolff of New York as public utilities consultant, assessed heavy expenses against the utilities for investigations, and more recently Lieutenant-Governor Earl K. Long as attorney collected $10,000 from one case after a 2-day hearing. The charges against the utilities for investigations are included in the rate structure and are eventually paid by the public.

The law which Governor Leche proposes would limit the costs to be assessed to any utility to $500 a month and would make these charges subject to review by the courts as to their reasonableness. Governor Leche said the present law had resulted in "ridiculous bills" being rendered against the utilities and that the new law would stop it. He asserted that the bill was being introduced with the approval of the members of the state public service commission.

Michigan

Phone Zones Proposed

A SYSTEM of toll zoning designed to save telephone subscribers in the Detroit metropolitan area approximately $95,570 a year was proposed last month by the state public utilities commission. A hearing on the proposal was fixed for May 25th.

Nearly 150 notices of the hearing were mailed on April 29th to the Michigan Bell Telephone Company, chief executives and city and village clerks of all the municipalities concerned, and all the organizations and individuals that have filed complaints on existing rates.

Message toll rates between telephone exchanges are based on air-line distances between exchange "rate centers," usually the post office locations, Howell Van Auken, vice chairman of the commission, explained. Toll charges from the Detroit suburban exchanges are based on the distances to the main post office location in downtown Detroit.

The state public utilities commission proposed that instead of scaling the toll rates from the 28 suburban exchanges to the main post office location in Detroit, the rates be based on the average distances to the various central office areas, of which there are 21. Under this plan, it was explained, it is contemplated that a subscriber in a suburban exchange could call contiguous Detroit central office areas for a toll charge of 5 cents. The rates would grade upward as the distances increased.

It was estimated that $38,540 of the savings would go to Detroit subscribers and $57,030 to suburban subscribers.

Missouri

Rate Cuts Filed

NEW rate schedules, embodying reductions totaling about $1,005,000 annually, were filed with the state public service commission on April 27th by the Kansas City Power and Light Company. The new rates, which became effective May 1st, affected Kansas City and its suburban district and an area in western Missouri extending from the city of Carrollton.

Roanoke, in Randolph county, and Hustonia, in Pettis county, were among the outstate communities affected by the new rates.

The biggest savings, it was said, would go to users of residential service in Kansas City. The estimated reduction for this class was $395,395. The estimated reduction for the city's suburban district was $32,122, and for the rural area $39,887.

The company was ordered by the state commission last March 19th to make the reduction, after appraisals had indicated a rate of return of about 10 per cent in the year ending July 31, 1936, instead of the 6½ per cent authorized by the commission in recent years.

Nebraska

Votes Municipal Plant

CONVINCED that the Iowa-Nebraska Light & Power Company will not sell either its York plant to the city or its entire system to the Tri-County Public Power and Irrigation District, York city council voted recently to proceed with plans for construction of a generating plant and distribution system. Robert Fulton, of Lincoln, was retained as engineer to make a final survey and furnish complete engineering service during construction.

Councilman L. R. Davis said he became convinced after conferences with George Johnson, Tri-County general manager, that Tri-County cannot acquire the private company "within a reasonable length of time." He quoted Johnson as saying Tri-County was negotiating with the purchase and would be in position to quote prices before June.

If Iowa-Nebraska is actually acquired, Johnson said the wholesale rate to the York municipal plant would be approximately three-quarters of a cent per kilowatt hour.

New York

Commission Accepts Rate Cut

THE state public service commission on April 27th announced that it had accepted a proposal of the Staten Island Edison Corporation, a subsidiary of the Associated Gas and Electric Company, to put into effect reductions in charges for electric service which,

it was calculated, would save customers about $500,000 annually.

Milo R. Maltbie, chairman of the commission, in a report recommending acceptance of the utility's offer, stated that accountants and engineers employed by the state agency, in examining the books of the company, found evidence warranting issuance of a temporary order for a reduction of between $400,000 and $500,000 a year in rates.

The chairman declared that the commission had been working toward establishment of a temporary reduction in rates and that acceptance of the company's offer under the circumstances would be more economical than proceeding with the details of a rate case, delay in effecting a saving for consumers, and possible litigation in settling the issue.

It was announced that members of the state commission's staff would confer with officers of the utility to work out new rate schedules which would eliminate apparent inequalities for service.

Utility Proposal

JUDGE Gilbert V. Schenck, Albany delegate to the constitutional convention, last month introduced a proposal providing that the state legislature shall pass no measure prohibiting any municipal corporation operating public utility service from making and receiving a fair return on the value of property used and useful in such public utility service, or prohibiting the use of profits resulting from operation of public utility service for payment of expenses or obligations incurred by such municipal corporation for municipal purposes. The bill went to the public utilities committee.

North Dakota

Utility Cannot Appeal

AN appeal taken by the Northern States Power Company from a decision of the state board of railroad commissioners was back in Cass county district court on May 6th.

A supreme court order holding the utility could not appeal directly to the high court from the board's decision in reducing electric current rates at Fargo, West Fargo, and Southwest Fargo was issued following a hearing on May 5th. A formal opinion covering legal questions was to be prepared later, it was stated.

Oregon

Municipal System Urged

A SUGGESTION that the city council investigate the feasibility of taking over Salem's electric system in order to receive full advantage of Bonneville power was made to the council and mayor recently by Brazier Small, ex-alderman.

Small declared that in case the project was found feasible the proposal could be submitted to a vote of the electors at the November general election.

The project, if approved, would be operated as a municipal system, Small said.

Districts Face Obstacles

PUBLIC utility districts in Oregon, even if organized as a distributing medium for Bonneville power, would face a serious obstacle in contracting with a fiscal agent for the sale of their bonds, according to bulletin information recently sent to Oregon Business & Investors, Inc., members by F. H. Young, manager.

All contracts between directors of municipal corporations in Oregon, such as a utility district, covering the proceedings incident to issuance and sale of bonds, must be approved by the Oregon state bond commission, it was pointed out. This state bond commission consists of Governor Martin, State Treasurer Holman, and one member of the industrial accident commission, T. Morris Dunne.

Without such approval, proceedings contracts covering sale of bonds are illegal in the state by act of the 1935 Oregon legislature, the taxpayer organization bulletin stated.

Pennsylvania

Win Appliance Fight

THE state superior court on May 4th ruled the policy of the state public utility commission "to prevent electric utilities from engaging in the sale of appliances" was arbitrary and unreasonable.

Acting on the appeal of five power com-

panies, the court reversed the state commission's order which denied the companies the right to discount to banking firms conditional sales contracts for appliances.

In an opinion written by Judge William McC. Parker, the court cited that the commission's only reason for rejecting the discount plan was that "it is the policy of the commission to prevent electric utilities from engaging in the sale of appliances." The state public utility commission's policy requires the setting up of an affiliated corporation for appliance sales.

Appellants in the test case were the Erie Lighting Company, Pennsylvania Edison Company, Pennsylvania Electric Company, Northern Pennsylvania Power Company, and the Metropolitan Edison Company.

South Carolina

Power Case Appealed

THREE South Carolina utility companies appealed to the U. S. Supreme Court on April 29th in their effort to halt construction of the Santee-Cooper hydroelectric and navigation project with Public Works Administration funds.

The Carolina Power and Light, the South Carolina Power Company, and the South Carolina Electric and Gas Company asked the high court to review a decision of the U. S. Fourth Circuit Court of Appeals which affirmed a lower Federal court dismissal.

The action was directed against the South Carolina Public Service Authority and its members, Secretary Ickes, as Public Works Administrator, and Harry L. Hopkins, Works Progress Administrator.

The corporations contended that the project, undertaken by the state's Public Service Authority with WPA funds, would "irreparably damage, if it does not destroy, the business and property of each of the petitioners."

Rate Reduction Announced

REDUCTIONS in the rates charged by the South Carolina Power Company, of Charleston, were announced last month by the state public service commission. The reductions would effect an aggregate annual saving to customers of approximately $77,000. The announcement said the new and lower rate in brackets above the minimum use class, would be enjoyed by approximately 7,500 residential customers.

The reduction was brought about by the elimination of the so-called objective rate, placing all residential customers on the same rate, regardless of the amount of power they use, the customers in the minimum use class being excepted.

The saving that will result for residential customers aggregates $46,000, and the saving for commercial customers, who will also get a reduction, will total $31,000. The new rates became effective on all bills rendered by the company after May 1st.

Tennessee

Power Loop Formed

FORMAL organization of Cumberland Electric Membership Coöperative, which is to obtain a loan from the Federal Rural Electrification Administration to erect power lines through seven counties, was completed at Clarksville last month with election of officers. M. G. Northington, Montgomery county, was named president; W. G. Jackson, Cheatham county, was elected vice president, and Oliver Howell, Stewart county, was appointed secretary-treasurer.

Other counties to be served by the loop are Houston, Robertson, Sumner, and a portion of Davidson.

The nine directors fixed $2 as the minimum monthly rate and set $5 as the initial membership fee to be paid by those in the area covered by the rural line "to show their good faith," explained Northington, "or their intentions to subscribe to the power when the lines are completed."

The project will serve more than 1,000 homes and will cost around $200,000. Construction on the first section of the project is expected to begin about August 1st.

Plan to Buy Utility Power

IF the move proves practical from the standpoint of economy the Nashville light plant will be abandoned and the city will buy the electric current it needs from the Tennessee Electric Power Company in the future.

Mayor Cummings, in a statement released on April 25th, said that "the city light plant is unable to generate sufficient electricity for the needs of the city of Nashville. For many months the Tennessee Electric Power Company has been furnishing current to the city to supplement the current generated at the light plant. The city is being charged between $3.000 and $4,000 per month by the Tennessee Electric Power Company for this additional electricity."

Information furnished him, Mayor Cummings said, indicated that "many thousands of dollars" could be saved annually by closing down the light plant and buying necessary current from the power company. He added that the light plant was badly in need of repair and "if its operation continued, an expenditure of many thousands of dollars will be necessary by the city in the very near future."

Mayor Cummings stated that he would "appoint a committee of outstanding citizens of Nashville to look into the advisability of making such a change and reporting their findings to the city council."

TVA Support Urged

LEON Jourolmon, member of the state public utilities commission and ardent TVA supporter, is reported to have written forty-five mayors last month suggesting that they mobilize sentiment behind President Roosevelt's public improvement program in order to obtain TVA distribution systems for their municipalities.

Jourolmon suggested that "you contact the officials of near-by cities and towns that are interested in acquiring their own electric systems for distribution of TVA power and see that letters explaining the local interests involved are sent to the local Congressmen and Senators."

The state commissioner said the President's recommendations contemplating loans of $1,450,000,000 and that the litigation in the TVA case have "reached the state in which no further obstructions exist to prevent cities from proceeding with their public power programs." Jourolmon's office said the letters had been sent to mayors of municipalities which have shown interest in obtaining TVA electricity.

Texas

Special Utility Fees

SPECIAL fees levied principally against utility companies will produce $291,850 for the general fund in the fiscal year beginning October 1st, Utilities Supervisor Joseph F. Leopold of Dallas reported to Assistant Finance Officer James W. Aston last month.

Mr. Aston said the fees, which go directly to the general fund without division to other financial branches of the government, would be slightly higher than during the current fiscal year, thereby easing slightly the job of preparing the budget.

The 4 per cent gross receipts tax levied against the Southwestern Bell Telephone Company should produce $158,000 compared to $153,000 this year, the Dallas Power & Light Company will pay $102,000 in special levies, a seat tax on busses operated by the Dallas Railway & Terminal Company will produce approximately $10,000, and taxicabs operated by the City Transportation Company will pay approximately $19,000.

Virginia

Power Plan Urged

REPORTING the results of a survey of the state's present electric power resources by Allen J. Saville and Leonard A. Blackburn, engineers, the state corporation commission recently revealed that Virginia's utilities may increase their sales from 55 to 60 per cent by 1946, if the present rate of development continues.

The survey recommended that the state commission and the utilities work together in planning a program to meet the additional needs for power not anticipated, so that there would be no duplication of effort and unnecessary waste of capital—that a state program be projected, rather than a series of individual programs by the companies. The report said:

"Based on the assumption that Virginia will continue a constructive plan of developing the state industrially, we believe that the increase in utility activities in the next decade will exceed the past decade by a percentage greater than 4 per cent growth per annum by a substantial sum.

"We cannot expect the domestic and commercial increase to go any faster than has been in the past. To maintain the rate of increase would be doing a big job. We are not exactly pessimistic about this phase, but we just cannot name the source of or name of the major appliance that will come into use to maintain this growth, other than the commercial use of air conditioning.

"Without forecasting either depressions, recessions, or booms, we believe that by 1946 the electric sales to ultimate consumers in the state of Virginia will reach a figure close to 1,700,000,000 kilowatt hours, an increase of 55 to 60 per cent."

Commenting upon the possible effect of the Tennessee Valley Authority, the engineers said there was no reason why eventually the Virginia systems could not be connected with this development. However, the TVA was described as an unknown quantity.

The Latest Utility Rulings

Fair Play in Administrative Proceedings

THE vast expansion of the field of administrative regulation in response to the pressure of social needs is made possible under our system of government by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that, in administrative proceedings of a quasi judicial character, the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. So says Mr. Justice Hughes of the United States Supreme Court in explaining why the court reversed an order of the Secretary of Agriculture fixing maximum rates to be charged by market agencies at the Kansas City stockyards.

A long record of evidence and exhibits had been collected in hearings before an examiner and findings had been prepared in a bureau of the Department of Agriculture, whose representative had conducted the proceedings for the government. These were submitted to the Secretary, who signed them with a few changes in rates. No opportunity was afforded to the market agencies for the examination of the findings thus prepared until they were served with the order. A rehearing by the Secretary was denied. The opinion of the court states:

> The part taken by the Secretary himself in the departmental proceedings is shown by his full and candid testimony. The evidence had been received before he took office. He did not hear the oral argument. The bulky record was placed upon his desk and he dipped into it from time to time to get its drift. He decided that probably the essence of the evidence was contained in appellants' briefs. These, together with the transcript of the oral argument, he took home with him and read. He had several conferences with the Solicitor of the Department and with the officials in the Bureau of Animal Industry and discussed the proposed findings. He testified that he considered the evidence before signing the order.

A full hearing and a fair and open hearing, it was ruled, required more than an understanding of the purport of the evidence on the part of the Secretary. The right to a hearing, it was said, embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one.

The court expressed the view that the answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, was futile, since in all substantial respects, the government acting through a bureau was prosecuting the proceeding against the owners of the market agencies. The court considered it idle to say that this was not a proceeding in reality against the agencies when their very existence was put in jeopardy, concluding:

> The maintenance of proper standards on the part of administrative agencies in the performance of their quasi judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.

Morgan et al. v. The United States of America et al.

Ohio Commission Disposes of Old Telephone Rate Case

THE Ohio Bell Telephone Company rate case, which has been before the commission and the courts for several years, has received further consideration by the commission in an order finding that excess earnings were earned during the years 1924 to 1932 inclusive. The excess earnings were ordered to be refunded.

The commission adhered to the final value for the company's intrastate property as of June 30, 1925, as fixed in the commission's order of January 16, 1934. Net property additions at cost were added for the years 1926 to 1929, when telephone construction costs remained fairly constant. With respect to property values for the years 1930, 1931, and 1932, the commission made substantial reductions arrived at by the cumulative effect of net additions at cost and used its judgment as to what was fair in view of depression prices.

The commission agreed with the attorney general for the state that annual expense of depreciation should not exceed the cost of property retirements during the period. In previous findings the commission had measured the company's expense by the per cent of retirements to depreciable property experienced during the three years and nine months immediately preceding the date certain. But, in this instance, the commission stated:

> The commission believes, however, 'that the actual experience of the company for the period under investigation represents more accurately the requirements for this expense, and that therefore the expense of depreciation for the period under investigation should more nearly equal the company's retirement losses during the period. This accords with the recommendation of the attorney general and the decision of the Supreme Court of the United States in West Ohio Gas Co. *v.* Ohio Pub. Utilities Commission (1935) 294 U. S. 63, 6 P.U.R. (N. S.) 449, decided subsequently to the order herein of January 16, 1934. The total of the expense now determined is approximately $10,000,000 less than the amount claimed by the company, and approximately $1,000,000 less than the cost of its property retirements for the period 1924 to 1932 inclusive.

Allowances were made for a return of 7 per cent for the years 1924 to 1929, inclusive; 6½ per cent for the years 1930 and 1931; 5½ per cent for the year 1932. The commission on January 29, 1937, had found the company's rates to have been reasonable from 1933 onward and at the same time ordered a rate reduction of approximately $2,000,000 annually effective April 1, 1937. The instant case, therefore, involved only the question of reparation for overcharges from 1924 to 1932 inclusive. *Re Ohio Bell Telephone Co. (Formal Case No. 3307).*

Necessity of Authority to Issue Demand Note

AN application by a public utility company for authority to issue a demand promissory note was denied by the Missouri commission, which held that the applicable statute did not cover the issuance of such securities.

The Missouri statute empowers the commission to grant approval of the issuance of stock, bonds, notes, or other forms of indebtedness of certain corporations when such securities are payable at periods of more than twelve months after the date thereof, for certain specified purposes. It is provided that such corporations may issue notes for proper corporate purposes and not in violation of law, payable at periods of not more than twelve months, without such consent. The commission held that as a matter of law the proposed instrument was a demand promissory note notwithstanding an inhibition as to the payment of interest unless earned. The commission concluded:

> If the applicable provisions of the General Regulatory Act are to be accorded their plain and obvious meaning it would necessarily follow that the authority requested by

the applicant in the instant case could not be lawfully or legally granted by the commission as it certainly was not the intent of the general assembly in the passage of §75 of the General Regulatory Act to cover or bring within the purview of that section the issuance of securities as requested in the instant application and further it is an attempted form of issuance of securities to which this commission should not lend its countenance of approval.

Re Central Distributing Co. (Case No. 9496).

Prohibition of Dividend Payments without Opportunity for Hearing

THE Pennsylvania commission held that it had jurisdiction to issue an order prohibiting the payment of dividends pending an investigation of an electric utility company, since this order maintained the status quo. The commission had previously prohibited declaration and payment of dividends and payment on account of indebtedness to affiliated companies pending disposition of the proceeding. A bill in equity had been filed in the local court praying for a restraining order but the court had refused to grant a preliminary injunction or restraining order on the ground that the commission order preserved the status quo, and the commission was proceeding to hearing and determination. The commission said:

> We think that a status quo order may be made without a prior hearing where the possibility of injury to the public interest is so great and apparent as in the instant case. The Dauphin county court by refusing to restrain the order of the commission on the ground that it merely preserved the status quo pending a determination has impliedly approved this view.

Pennsylvania Public Utility Commission v. Edison Light & Power Co. (Complaint Docket No. 11585).

Restriction of Contract Carriers to Protect Common Carriers

THE South Dakota commission denied an application by a contract motor carrier for authority to substitute a contract with Swift and Company, for transportation of fresh meat to certain towns, in place of a contract entered into with and previously filed on behalf of a beverage sales company. This was under the practice followed in the state of limiting each contract carrier to three contracts.

The commission referred to the statutory provision that the commission could restrict the operations of Class C contract carriers when necessary to avoid detrimental competition with other established transportation agencies or other motor carriers. The commission said:

> This statute recognized that established common carrier service for and available to the public generally, is to be protected from detrimental competition by enlargement of present existing Class C service. The legislature recognized that instances would arise in which a Class C contract carrier, by obtaining as contract patrons three of the largest shippers at a given wholesale distributing point, would make unprofitable and result in abandonment of common carrier service over routes now being served in this state.

The commission found that there was no evidence to indicate that the proprietors of meat markets in the territory, or the consumers of meat, would be deprived of any advantages or necessary business supplies in the absence of the applied-for Class C service. The commission continued with the following statement:

> The willingness and ability of the applicant to perform the service, together with the desire of Swift and Company to reach that territory, is not sufficient justification

to overcome the clear showing made in the record that to authorize the substitution of contracts would deprive the existing Class A motor carriers of a substantial tonnage within the Watertown trade area which they are now moving, and which in part is necessary for them to have to maintain the present Class A common carrier service offered to the public over the route.

Re Jacob A. Wolff (Nos. 6149-C, 7453-C).

Fostering of Healthful Competition

AUTHORITY to operate auto trucks was granted by the Nevada commission where the commission had denied prior applications because of protests by rail carriers. The commission, as a ground for its action, stated that the rail lines had taken the position that it was unnecessary for them to take into consideration improved service in determining whether abandonment of service should be effected but had merely relied upon the fact that feeder lines were not a paying proposition. The commission made this statement:

> To our minds, this seems to be a departure from the former attitude taken by regulatory bodies in which feeder lines, even though operating at a loss, may be the means of the entire system operating at an advantage and helpful to the main system as a whole. We fail to understand the reasoning of that position when consideration is given to the proposition of convenience and necessity, for, to our minds, that is of paramount importance so far as the public is concerned. As we view it, it should be the policy of every utility to encourage business and to do all within their power to build up business instead of tearing down. The attitude assumed of recent years by the rail lines to segregate each and every branch as a working unit, and to judge each as a basis for continuation or abandonment, is a reasoning upon their part which we fail to understand, and a theory with which we cannot agree.

The commission was of the opinion, based upon experience of the past, that if convenience and service were to be maintained over certain designated routes, the only way that it could be maintained was by helpful competition and that it could only be accomplished by that method of having in the field two healthy competing lines seeking a betterment of service to the community affected. Although this might seem a departure from the former positions taken by the commission, it was said that from a careful study of transportation facilities within the country at the present time and the rapid progress of highway transportation, the commission should do everything within its power to promote and develop healthful competition for its citizens at large, as well as to encourage the advancement and development of those instrumentalities dealing in transportation. *Re Nevada-California Transportation Co. (CPC A-442).*

Restoration of Roadway upon Street Railway Abandonment

THE Pennsylvania commission asserted its jurisdiction to enforce the obligation of a street railway company to remove its facilities and restore the roadway upon abandonment of street railway service. The commission held that it could impose such conditions as are required by public safety and comfort in authorizing abandonment.

A street railway company, it was held, should not be permitted to discontinue service without performing its common law liability of removing its poles, wires, and other facilities and restoring the pavement of the invaded street or highway to the condition of the adjacent pavement. Moreover, the commission held that the acquiescence of a city by agreement with the company to leave the rails in the streets through payment of a

stipulated sum by the company to the city should not defeat the interests of public welfare and relieve the company from performing its common law liability within such time and under such conditions as the commission might deem to be just. *Re West Penn Railways Co. (Application Docket No. 35546).*

Commission Cannot Revoke Permit on Account Of Negligence

THE Colorado commission held that the question whether or not the holder of a permit was guilty of negligent operation of his truck would require the exercise of a judicial power which rests in courts and not in the commission. Moreover, the commission held that while it could determine the question whether a permit should be revoked for violation of the Commercial Carrier Act or the commission's rules and regulations, it could not revoke a permit on account of negligent operation.

Revocation must be for violation of some provision of the Commercial Carrier Act or of the terms and conditions of the permit, or the violation of some rule or regulation of the commission promulgated under that act, it was held. The grounds stated in the commission's General Order No. 46, promulgated in connection with commercial carrier operations, do not include negligent operation as a ground for revocation. *Moore v. Hastings (Case No. 4685, Decision No. 11598).*

Other Important Rulings

SUIT by the mayor of Philadelphia charging waste and mismanagement by the Philadelphia Gas Works Company (U. G. I.), operating lessee of the city-owned gas works, was dismissed by Judge Finletter in Common Pleas Court on procedural grounds. The court found that the lease between the city and the operating company was still in effect, and that the city was, therefore, not in a legal position to sue for surcharges alleged by the mayor of Philadelphia to be in the amount of approximately $14,000,000. *City of Philadelphia v. Philadelphia Gas Works Co.*

The Pennsylvania commission held that a corporation incorporated to carry on a general warehousing business, which is not a public utility business, had no authority under its charter to engage in a general transportation service involving the transportation of personal property not going into or out of the corporation's warehouse. The applicable law in Pennsylvania limits public utility operations to a single purpose. *Re Haugh & Keenan Storage & Transfer Co. (Application Docket No. 25417, Folder No. 3).*

The Pennsylvania commission denied leave to defer filing of an answer by a public utility company in a reparation case pending the outcome of rate proceedings before the commission and in Federal court. The commission said that the proceedings were unrelated except that the amount of reduction in rates for the future finally ordered might have some bearing upon the amount of reparation, if any, to be awarded, and this relationship would not in any event become of significant importance until the instant case had proceeded to hearing. *Ramsay et al. v. Edison Light & Power Co. (Complaint Docket No. 11576).*

The Colorado commission amended its general order relating to motor vehicle carriers to provide that the leasing of motor vehicle equipment owned or operated by any motor vehicle carrier of freight to any person, firm, or corporation other than a duly authorized car-

rier for hire, either common or private, would be prohibited. *Re Rules and Regulations Governing Motor Vehicle Carriers (Third Revised General Order No. 39).*

The Colorado commission held that a municipality which because of inadequate water supply could not serve more customers without injury to its resident customers was not required to extend service to an applicant residing outside of limits of the municipality. *Shea v. Aurora (Case No. 4672, Decision No. 11506).*

The New York commission authorized the inauguration of motor bus service between certain towns over the objection of railroads, stating that while important questions to be determined were the extent to which the existing railroad services would be adversely affected and whether or not the probable injury to them was sufficient reason for denying the application, the controlling determination was whether or not the communities affected were entitled to additional modern and improved transportation service. *Re Buffalo & Erie Coach Corp. (Case No. 4627).*

The New York commission, in approving proposed journal entries to set up accounts of a municipal electric plant in accordance with the commission orders held that municipalities as well as private utility companies must observe the rule that expenditures classified as operating costs by responsible officials of the utility presumed to be familiar with the conditions at the time the distribution between capital and operating expenses were made may not in after years be redistributed and made a part of the cost of property. *Re Wellsville (Case No. 9511).*

The California commission established toll bridge rates for a company operating under a franchise, which required it, upon expiration of the franchise, to transfer the property to public authorities without compensation. Such companies were brought under commission jurisdiction by statutory amendment in 1937. The commission allowed a rate of return slightly higher than that considered reasonable for utilities when tested upon the basis usually followed, in order to assure financial stability and to guard against possible inaccuracies in the estimate of induced traffic to result from rate reductions. *Re American Toll Bridge Co. (Decision No. 30612, Case No. 4259).*

The Wisconsin commission, in authorizing an electric company to install a Diesel engine and generator, where commission engineers seemed to favor purchase of power rather than generation, said that in a situation of this kind, where there is no material difference between the cost of purchased power and the cost of its generation by the utility itself, the election as to which method should be adopted should rest with the utility, although if at some future time the cost of generating energy locally should prove to be materially greater than the cost of purchased energy, that excess could not properly be considered by the utility as a part of allowable operating expense. *Re La Valle Electric Light Co. (CA-546).*

The Pennsylvania commission held that the failure of a motor carrier to obtain a copy of an itemized list of articles on a shipping order did not excuse the carrier from charging the properly applicable class rate, and it held further that a customer paying charges in excess of tariffs is entitled to a refund without proof that the charges were unreasonable in and of themselves and without proof of additional damage. *Jewel Tea Co. Inc. v. Garner (Complaint Docket No. 11361).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 23 P.U.R.(N.S.) NUMBER 1

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PUBLIC UTILITIES REPORTS

FEDERAL POWER COMMISSION

Re Gulf States Utilities Company

[Docket No. IT-5509, Opinion No. 31.]

Discrimination, § 19 — Rates — Elimination before contract expiration.

1. An electric utility company which has adopted a new rate should, in order to avoid discrimination, make it available and apply it uniformly to all customers of the same class at the same time and should not await the expiration of existing contracts before making it applicable to customers having such contracts, p. 3.

Discrimination, § 96 — Electric rates — Credit allowance for standby service.

2. Credit allowances provided for standby service under effective rate agreements are discriminatory to the extent that such credits for the maintenance of generating equipment for standby service by certain customers differ from or are less than the credits specified in a rate agreement with another customer, p. 4.

[March 28, 1938.]

ORDER *to show cause why a public utility company should not remove discrimination in rates and in credit allowances for standby service; elimination of discrimination required.*

By the COMMISSION: The Commission under date of February 15, 1938, issued an order in the above matter calling upon the Gulf States Utilities Company to show cause, on or before March 16, 1938, why it should not:

(A) Remove discriminations in rates charged for electric energy delivered to the Gulf Public Service Company for service at DeQuincy, Louisiana, the towns of Abbeville and Erath, Louisiana, the village of Broussard, and the Louisiana Power and Light Company, by making its rate schedule designated as Schedule 423 applicable; and

(B) Provide a uniform basis for

determining credits allowable for standby service.

The pertinent facts set forth in the show cause order of the Commission and conceded by the response of Gulf States Utilities Company are as follows:

"The thirteen agreements for the sale of energy contain five distinct and separate rates for service, six of the agreements contain the same rate for service; certain customers would be more advantageously served if billed under some one of the other rates filed other than the one actually applied, as shown in the table attached hereto as Appendix 'A'; if changes in rates were made in accordance with the analyses shown in Appendix 'A,' each customer would be billed under that rate resulting in the lowest bill and three of the five rates now used would be eliminated;

"The company attaches riders to certain of its agreements whereby the customer obtains a credit for the maintenance in operating condition of such generating equipment as said customer has installed; three different allowances of credit are found in the agreements filed, as shown in Appendix 'A,' some customers obtaining less credit per kilowatt of standby capacity than others."

Appendix "A" to which reference is made was attached to the show cause order and was as follows:

GULF STATES UTILITIES COMPANY

Summary of Analysis of Wholesale Power Contracts

Name of Customer	Utility Rate Designation	Lowest Charges Would Result if Billed Under	Standby Credit
Gulf Public Service Co.			
1. DeQuincy, La., connection	E–600–1	423	None
2. Crowley and New Iberia, La., connections	E–600–6	Same Schedule	No. 2
3. Breaux Bridge, La., connection	423	Same Schedule	None
Louisiana Power & Light Co.	E–600–3	423*	No. 1
Louisiana Ice & Elec. Co., Inc.	E–600–6	Same Schedule	No. 1
Village of Broussard	Special Contract	423*	None
Town of Erath	Special Contract	423*	None
Town of Abbeville	E–600–3	423*	No. 1
Town of St. Martinsville	423	Same Schedule	No. 3
Town of Vinton	423	Same Schedule	No. 3
Youngsville Sugar Co., Inc.	423	Same Schedule	No. 3
Louisiana Public Utilities Co., Inc.	423	Same Schedule	None
Community Public Service Co.	423	Same Schedule	None

Standby Credit

(1) First 75 kw. at	$1.00 per kw.
Excess at	0.75 per kw.
(2) First 75 kw. at	$1.00 per kw.
Next 1,925 kw. at	0.75 per kw.
Excess at	0.50 per kw.
(3) $0.75 per kw.	

* Supplementary Notes—Charges would be lower if load factor is approximately 25% or over.

The Gulf States Utilities Company in its response under date of March 2, 1938, to the show cause order advised the Commission that:

"It has been our intention since the institution of Schedule 423 on July 1, 1937, to offer this rate to the parties applicable as their contracts expired. However, if it is the desire of your Commission that this schedule become effective immediately, we shall be glad

to coöperate and immediately offer new contracts to the customers."

Regarding the proposition that uniform provisions be made for the determination of standby credits the company said:

"With reference to (B) above, riders giving credits for standby service will be uniform to all parties covered in your order upon application of Schedule 423."

A review of the Gulf States Utilities Company rate contracts now on file with the Commission for the particular customers affected by the order to show cause reveals the following termination dates:

	Contract Expiration Date
Gulf Public Service Co. (De-Quincy connection)	Nov. 19, 1940
Louisiana Power & Light Co.	Oct. 3, 1940
Town of Erath	Sept. 1, 1938
Town of Abbeville	Jan. 1, 1939
Village of Broussard	May 1, 1938

[1] It is obvious that to deny the above customers the benefit of the lower rate until their respective rate contracts expire will unduly prolong the present discriminations. Proper practice and the avoidance of undue discrimination requires, except in unusual cases, that once a new rate is adopted by a company it be made available and applied uniformly to all customers of the same class at the same time.

The company in its reply to the show cause order states:

"However, if it is the desire of your Commission that this schedule become effective immediately, we shall be glad to coöperate and immediately offer new contracts to the customers."

It is our opinion that new contracts should not be required to make effective the application of Schedule 423, but that it should be provided for in supplemental agreements. A review of the rate contracts filed by the Gulf States Utilities Company discloses that in the case of the towns of St. Martinsville and Vinton, Schedule 423 was made effective by supplemental agreement as soon as it was adopted without requiring new contracts because the original agreements with these two towns, entered into in 1935, contained a provision to the effect that the rates charged should be the lowest rate available to that class of consumer. Such a provision should not be necessary to insure fair and nondiscriminatory treatment. Moreover, in the cases of the Youngsville Sugar Company, Inc., the Louisiana Public Utilities Company, Inc., and the Community Public Service Company, Schedule 423 was made available under a standard form of contract having a term of one year. Therefore, where a new contract is necessary, because of the expiration of an existing contract and Schedule 423 is applicable, the term of the new contract should be one year.

If the company applies the credit rider 423-A to only those customers affected by the application of Schedule 423, only partial uniformity in credit for standby service will be achieved because a different rate of credit will still be effective for the Gulf Public Service Company (New Iberia, Louisiana, connection) and a still different rate of credit will be allowed to the Louisiana Ice & Electric Company, Inc. This situation is clearly shown by Appendix "A" above.

To achieve uniformity in credit allowances for standby service, without effecting any decrease in the cred-

its now given, and with a minimum of adjustments, the schedule of credits now applied to the Gulf Public Service Company (New Iberia, Louisiana, connection) should be made available to all customers within the purview of the show cause order. This will alter the credit allowance to the towns of St. Martinsville and Vinton and the Youngsville Sugar Co., Inc., but there would be no change in the credit allowance to the other consumers affected.

The Commission, having considered the foregoing facts disclosed by rate agreements duly filed by Gulf States Utilities Company and the company's response under date of March 2, 1938, to the order to show cause, finds:

That charges assessed under effective rate agreements for electric energy supplied to Gulf Public Service Company at DeQuincy, Louisiana, the towns of Abbeville and Erath, Louisiana, the village of Broussard, and the Louisiana Power and Light Company are unduly discriminatory to the extent that such charges are based upon rates and charges in excess of rates and charges specified in Schedule 423; and

[2] That credit allowances provided for standby service under effective rate agreements, to the extent that such monthly credits for the maintenance of generating equipment for standby service made available by Louisiana Power & Light Company, Louisiana Ice and Electric Co., Inc., Youngsville Sugar Company, Inc., and the towns of Abbeville, St. Martinsville, and Vinton are unduly discriminatory to the extent that such credits differ from or are less than the credits specified in schedule provided in rate agreement with Gulf Public Service Company at its Crowley and New Iberia, Louisiana, connections, as follows:

First	75 kw. @	.....	$1.00 per kw.
Next	1,925 " "	.....	.75 " "
Over	2,000 " "	.....	.50 " "

Upon consideration of the record of the proceedings in this matter, the Commission is of the opinion that, if the Gulf States Utilities Company shall within thirty days remove the undue discriminations herein found to exist, the rule to show cause shall be deemed to have been satisfied. An appropriate order of the Commission will be issued.

ORDER

It appearing to the Commission that:

(1) On February 15, 1938, the Commission ordered the Gulf States Utilities Company to show cause on or before March 16, 1938, why:

(A) Its rate schedule designated as 423 should not be applied to Gulf Public Service Company for service at DeQuincy, La., to the town of Abbeville, La., to the Louisiana Power and Light Company, to the village of Broussard, La., and to the town of Erath, La.;

(B) The present various credits for standby service should not be made uniform or eliminated and reflected in the rate charged and applied to all customers uniformly;

(2) By letter dated March 2, 1938, said Gulf States Utilities Company responded to said order of February 15, 1938, stating as to (A) that:

"It has been our intention since the

institution of Schedule 423 on July 1, 1937, to offer this rate to the parties applicable as their contracts expired. However, if it is the desire of your Commission that this schedule become effective immediately, we shall be glad to coöperate and immediately offer new contracts to the customers."

And stating as to (B) that:

"With reference to (B) above, riders giving credits for standby service will be uniform to all parties covered in your order upon application of Schedule 423."

Upon due consideration of the order to show cause, the return filed thereto, and other matters of record, and for the reasons set forth in the Commission's Opinion No. 31, issued this date and made a part hereof, the Commission *orders* that:

I. If within thirty days from the receipt of this order the Gulf States Utilities Company removes the undue discriminations found by the Commission to exist, and duly files with the Commission rate schedule supplements to existing agreements in conformity with the lettered subsections of this part which follow, then this proceeding shall terminate and the order to show cause shall be deemed to have been satisfied and without further force or effect.

(a) Schedule 423 shall be made applicable to electric energy delivered to Gulf Public Service Company at DeQuincy, Louisiana, the towns of Abbeville and Erath, Louisiana, the village of Broussard, Louisiana, and Louisiana Power and Light Company.

(b) Schedule of credit allowances for the maintenance of generating equipment for standby service now applicable to Gulf Public Service Company at its Crowley and New Iberia, Louisiana, connections shall be made applicable to Louisiana Power and Light Company, Louisiana Ice & Electric Company, Inc., Youngsville Sugar Company, Inc., and the towns of Abbeville, St. Martinsville, and Vinton, Louisiana.

(c) The rate schedule supplements provided in (a) and (b) above shall become effective as of the date on which they are duly filed with the Federal Power Commission.

II. If within thirty days from the receipt of this order the Gulf States Utilities Company shall have failed, in whole or in part, to remove the undue discrimination found by the Commission to exist with respect to the designated rate schedule agreements as specified in I above, then the order to show cause, issued under date of February 15, 1938, shall not be deemed to have been satisfied.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

George F. Anspach, Trading and Doing Business As Anspach Electric Company

v.

Metropolitan Edison Company

[Complaint Docket No. 11378.]

Service, § 327 — Electrical inspection — Acceptable certificates.

An electric utility company's rule that it will accept only certificates of compliance produced by a named rating association is unfair, unjust, and unreasonable, imposing payment of larger inspection fees upon customers but affording no greater protection to them, to the utility company, or to the general public.

[March 14, 1938.]

COMPLAINT *against requirement of electric utility company as to certificates of compliance before making connection with company lines; complaint sustained and company ordered to show cause why it should not file revised rule. See also Public Utility Commission v. Metropolitan Edison Co. 23 P.U.R. (N.S.) 10, post.*

By the COMMISSION: Complainant avers that the Metropolitan Edison Company tariff filed April 1, 1937, effective May 1, 1937—revised page 6, paragraph 3, of "General Rules and Regulations," provides for certificates of compliance issued by the Middle Department Rating Association or municipal inspection bureau before making a connection with said company's lines; that, inasmuch as there is no municipal inspection bureau in the city of Reading, the effect of this rule is to require all electric inspections to be made by representatives of the said Middle Department Rating Association which requirement is unfair, unjust, and discriminatory; that more prompt service on electric inspection work can be and has been secured by complainant from properly qualified representatives of a Pennsylvania corporation organized and making such inspection at reduced cost to complainant; that, prior to November, 1936, Metropolitan Edison Company accepted certificates of compliance of the said corporation, but since that date said company has arbitrarily and without cause refused to accept certificates except from the Middle Department Rating Association; that inspections made by said corporation and in accordance with regulations of the National Board of Fire Underwriters and the provisions of the Na-

tional Electrical Code; and that certificates of compliance issued by said corporation are accepted by the only other electric company operating in Berks county.

Respondent's answer alleges that the averments of complainant that more prompt inspection service can be and has been secured at a reduced cost from an unnamed Pennsylvania corporation are so vague and indefinite as not to be susceptible of definite answer; that any certificate accepted by the employees of respondent was taken without knowledge or authority of respondent's management; that the character of inspection made by the unnamed Pennsylvania corporation is so vague and indefinite as not to be susceptible of definite answer; that respondent has no knowledge that certificates issued by said Pennsylvania corporation are accepted by other electric companies in Berks county; that respondent for upwards of twenty years has relied upon certificates of Middle Department Rating Association; that respondent's requirement that certificates be produced from the Middle Department Rating Association before electric service is rendered is fair, just, and reasonable; that by reason of the vague and indefinite character of complainant's averments and the lack of any averment that complainant is a customer of respondent or that any certificate has been required from him as a customer, complainant is without standing to maintain the complaint; and that the extent and character of inspections of installations before connection are matters within the discretion of respondent and the Commission is without jurisdiction.

Hearing has been held. Respondent's testimony, that it has depended exclusively or entirely since 1912 on certificates from the Middle Department Rating Association, is not supported by respondent's tariffs, filed with the Commission in conformity with law, containing rules and regulations governing the supplying of electric service. Respondent's Tariff P. S. C. Pa. No. 1, in effect from January 1, 1914, to May 1, 1928, contained the following rule:

"All wiring to be connected to the mains of this company must be installed in accordance with the requirements of the Underwriters Association of the Middle Department and the company shall not be required to supply electricity until the equipment shall have been approved by the constituted authorities and by the company."

Under this established rule installations must meet both the requirements of the Underwriters Association of the Middle Department and the company, and before the company is required to supply service, approval must be given by not only the constituted authorities but the company. This rule was canceled and superseded by respondent's tariff rule, effective from May 1, 1928, to January 5, 1937, permitting acceptance of the certificate of a local inspection bureau, as follows:

"There shall be no obligation on the part of company either to connect or remain connected with any consumer's wiring when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements or when the certificate of

the Underwriters or the local inspection bureau has not been issued."

Under this legally established rule, installations must meet the provisions of the National Electrical Code and also the company's requirements, but before the company is required to supply service a certificate from the Underwriters or the local inspection bureau must be secured. The company reserves to itself the right of final determination of not only initial compliance but the maintenance of compliance with not only the National Electrical Code but also with its own requirements. The company's requirement for a certificate for an installation which has already met its own requirements is not disclosed. This rule was canceled and superseded by respondent's rule filed January 5, 1937, effective by special permission of the Commission on one day's notice, January 6, 1937, as follows:

"There shall be no obligation on the part of company either to connect or remain connected with any consumer's wiring or facilities when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements or when the certificate of the Underwriters or the local inspection bureau has not been issued."

Under this legally established rule respondent continues to reserve to itself final determination as to both the initial and maintenance of compliance with not only the National Electrical Code, but also with its own requirements. Under this rule, the company continues its requirement for securing a certificate for an installation which has met its own requirements. This rule was also canceled and superseded by respondent's rule filed April 1, 1937, effective May 1, 1937, as follows:

"There shall be no obligation on the part of company either to connect or remain connected with any consumer's wiring or facilities when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements or when the certificate of compliance with the regulations of the National Board of Fire Underwriters, issued by the Middle Department Rating Association or the municipal inspection bureau has not been issued."

The record shows that an inspector of the Lancaster and Suburban Electrical Inspection Company, Inc., was formerly in the employ of respondent in a responsible position, and subsequently an inspector for the Middle Department Rating Association during thirteen years immediately preceding his present work as inspector for the Lancaster Company. Another inspector of the Lancaster Company was an inspector for the Middle Department Rating Association for about six years immediately preceding his present work as inspector for the Lancaster Company. The record does not disclose that respondent refused to accept certificates secured from the Middle Department for inspections made by these same inspectors, whose inspections respondent now refuses to accept, contending it has no knowledge of their competency.

The record contains no evidence that respondent ever exercised its right to determine the adequacy of any initial or subsequent inspection of

any installation. Likewise it does not appear that any defective installations were discovered by respondent resulting in its refusal to supply service. The wisdom of inspections by inspectors employed by an inspection company or agency in which electrical contractors who make the installation and the company supplying the service are particularly interested is not before the Commission in this proceeding.

From the record the Commission is not convinced that respondent's requirement that it will accept only certificates of compliance produced from the Middle Department Rating Association is fair, just, or reasonable, but on the contrary it appears that such requirement is unfair, unjust, and unreasonable, imposing payment of larger inspection fees upon customers of respondent, but affording no greater protection to them, to respondent, or to the general public.

Upon a full consideration of the record herein, the Commission is of opinion and finds that respondent's refusal to accept certificate of compliance secured from others than the Middle Department Rating Association or the municipal inspection bureau is unreasonable and that the complaint should be sustained; therefore,

Now, to wit, March 14, 1938, it is *ordered:* That the complaint be and is hereby sustained.

It is *further ordered:* That Metropolitan Edison Company, respondent, within thirty days from service of this order, file with the Commission as a part of its tariff, a rule effective upon ten days' notice, revising the third paragraph of rule 3 of Tariff Electric Pa. P. U. C. No. 32, first revised page No. 6 (now tariff Electric Pa. P. U. C. No. 33 original page No. 6) to provide for acceptance by respondent of certificates issued by any competent inspection agency showing compliance with the provisions of the National Electrical Code and the requirements of respondent, as follows:

"There shall be no obligation on the part of company either to connect or remain connected with any consumer's wiring or facilities when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements or when the certificate of compliance with the regulation of the National Board of Fire Underwriters, issued by the Middle Department Rating Association or the municipal inspection bureau or by any competent inspection agency, has not been issued."

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

Metropolitan Edison Company

[Complaint Docket No. 11407.]

Service, § 69 — Commission jurisdiction — Inspection rule — Electric utility.

1. The Commission has authority to order an electric utility company to change its rule relating to the requirement of certificates of inspection as a condition precedent to the company connecting, or remaining connected with, any consumer's wiring or facilities, p. 11.

Service, § 327 — Certificate of inspection — Rule of electric utility.

2. A rule of an electric utility company which provides that before electric service is connected a certificate of compliance shall be obtained from a named rating association or a municipal inspection bureau should be changed to provide that a certificate will be accepted from such authorities or from any competent inspection agency, p. 12.

[March 14, 1938.]

RULE *to show cause why an electric utility company should not revise its rule relating to certificates of inspection; revision of rule ordered. See also Anspach v. Metropolitan Edison Co. 23 P.U.R.(N.S.) 6, ante.*

By the COMMISSION: In the above-designated case, the Commission issued a rule May 3, 1937, requiring the Metropolitan Edison Company to show cause why Rule 3 contained in its Tariff Electric P. U. C. Pa. No. 32, which provides: "There shall be no obligation on part of the company either to connect or remain connected with any consumer's wiring or facilities when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements, or when a certificate of the underwriters or municipal inspection bureau has not been issued," should not be revised to permit inspections to be made by any competent inspection agency.

Respondent's answer alleges that for upwards of twenty years it has relied upon certificates of compliance issued by the Middle Department Rating Association; that its requirement that certificates of compliance be produced from the Middle Department Rating Association before service is rendered, is fair, just, and reasonable; that the extent and character of the inspection of a prospective customer's premises before service is rendered is a matter entirely within the discretion of respondent and the Commission is

without jurisdiction; that it has no knowledge that there are competent inspection agencies in its territory other than those specified in Rule 3 of respondent's general rules and regulations.

Respondent's Rule 3 as set forth in the Commission's Rule was canceled and superseded by respondent's filing with the Commission April 1, 1937, effective May 1, 1937, revised Rule 3, as follows:

"There shall be no obligation on part of the company either to connect or remain connected with any consumer's wiring or facilities when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements or when the certificate of compliance with the regulations of the National Board of Fire Underwriters, issued by the Middle Department Rating Association or the municipal inspection bureau has not been issued."

The question in this case is whether or not revised Rule 3 of the Metropolitan Edison Company which provides that before electric service is connected a certificate of compliance issued only by the Middle Department Rating Association or the municipal inspection bureau be secured, is a reasonable rule.

Hearing has been held. From the record it appears that two inspectors of the Lancaster and Suburban Electrical Inspection Company, Inc., continued to perform the same character of inspection work as they performed for many years for the Middle Department Rating Association, whose certificate respondent states it relied upon. The record shows one of the inspectors was formerly in the employ of respondent in a responsible position, and subsequently an inspector for the Middle Department Rating Association during thirteen years, immediately preceding his present work as inspector for the Lancaster Company. The other was an inspector for the Middle Department Rating Association for about six years immediately preceding his present work as inspector for the Lancaster Company. The record does not disclose that respondent refused to accept certificates secured from the Middle Department for inspections made by these same inspectors, whose inspections respondent now refuses to accept contending it has no knowledge of their competency.

From the record, the Commission is not convinced that respondent's requirement that it will accept only certificates of compliance produced from the Middle Department Rating Association before electric service is supplied is fair, just, or reasonable, but on the contrary it appears that such requirement is unfair, unjust, and unreasonable, imposing payment of larger inspection fees upon its customers but affording no greater protection to them and making no addition to the promotion of public safety.

[1] With respect to the jurisdiction of the Commission, "The company may manage its own affairs and neither the Commission nor the court is authorized to interfere, except for the special purposes mentioned in the Public Utility Law." Superior court in Pennsylvania Power & Light Co. v. Public Service Commission (1937)

128 Pa. Super. Ct. 195, 19 P.U.R. (N.S.) 433, 443, 193 Atl. 427.

Article 4, § 412, of the Pennsylvania Public Utility Law (66 PS § 1182) provides: "The Commission may, after reasonable notice and hearing, upon its own motion or upon complaint, prescribe as to service and facilities, just and reasonable standards, classifications, regulations, and practices to be furnished, imposed, observed, and followed by any or all public utilities."

The Commission is of the opinion that § 412 is a definite reference in the Public Utility Law to the subject matter of this controversy.

[2] Upon a full consideration of the record herein, the Commission is of the opinion and finds that respondent's refusal to accept certificate of compliance secured only from the Middle Department Rating Association or the municipal inspection bureau is unreasonable and that the within rule should be made absolute. Respondent claims that these inspections are matters entirely within its discretion, and that the Commission is without jurisdiction. The Commission does not accept this theory. The jurisdiction of the Commission to go into matters of adequacy and safety of service and the reasonableness of requirements upon consumers in connection with it cannot be doubted. The motion to dismiss for lack of jurisdiction must consequently be denied; therefore,

Now, to wit, March 14, 1938, it is *ordered:* That respondent's motion to dismiss be and is hereby denied.

It is *further ordered:* That the rule issued in this proceeding on May 3, 1937, be and is hereby made absolute.

It is *further ordered:* That Metropolitan Edison Company, respondent, within thirty days from the service of this order, file with the Commission as a part of its tariff a rule effective upon ten days' notice, revising the third paragraph of Rule 3 of Tariff P. U. C. Pa. No. 32, first revised page No. 6 (now Tariff Electric Pa. P. U. C. No. 33, original page No. 6), to provide for the acceptance by respondent of certificates of compliance issued by any competent inspection as follows: "There shall be no obligation on the part of company either to connect or remain connected with any consumer's wiring or facilities when the installation is not made and maintained in accordance with the provisions of the National Electrical Code and company's requirements or when the certificate of compliance with the regulation of the National Board of Fire Underwriters, issued by the Middle Department Rating Association or the municipal inspection bureau or by any competent inspection agency, has not been issued."

OHIO PUBLIC UTILITIES COMMISSION

Re The Ohio Fuel Gas Company et al.

[No. 10124.]

Consolidation, merger, and sale, § 36 — Grounds for disapproval — Lack of operating rights.

Authority for a natural gas company to sell its property, but not its franchise to a company supplying artificial gas in a part of the same city should be denied when the artificial gas company (proposing to furnish mixed gas to all customers) operates without a franchise and solely by sufferance on the part of the city and cannot lawfully operate the property sought to be acquired.

Franchises, § 56 — Expiration — Continued operation.

Discussion of the operating authority of a gas utility company which has been operating in part of a city either under an old limited-term ordinance of a predecessor or by mere sufferance of the city, p. 16.

Service, § 335 — Gas — Natural, artificial, or mixed — Municipal regulation.

Discussion of regulation by municipal ordinance of the heating quality of natural, artificial, or mixed gas, p. 18.

Rates, § 379 — Gas — Thermal basis for charging.

Discussion of the desirability of charging for gas on the heat unit basis, p. 18.

[March 30, 1938.]

JOINT *application by gas utility companies for authority to sell and to buy property; denied.*

By the COMMISSION: This day this matter, after full hearing, came on for final consideration upon the joint and separate application of The Ohio Fuel Gas Company and The Northwestern Ohio Natural Gas Company for the consent and authority of this Commission for

1. The sale by said The Northwestern Ohio Natural Gas Company and the purchase by said The Ohio Fuel Gas Company of the physical property comprising the distribution mains of said The Northwestern Ohio Natural Gas Company, the services, meters, regulators, and other miscellaneous personal property, ten tracts of land and buildings thereon, used and useful in the furnishing of natural gas to the public and private consumers thereof in the city of Toledo, but not the franchise or contract to furnish natural gas service in the city of Toledo.

2. The issue, by said The Ohio Fuel Gas Company in payment of such physical property, of 60,247 shares of its common capital stock.

3. The discontinuance and abandonment of the furnishing of natural gas

service in said city of Toledo and the unincorporated territory immediately adjacent thereto by said The Northwestern Ohio Natural Gas Company and the inauguration by said The Ohio Fuel Gas Company in said city of Toledo and the unincorporated territory immediately contiguous thereto, of a mixed gas service for which it proposes to establish the following schedule for domestic consumption and usage:

Character of Service

Gas service under this schedule shall be mixed gas (natural and artificial gas) having a minimum heating value of 850 B.T.U. per cubic foot.

Billing Unit

The billing unit shall be designated as the Toledo gas unit, which shall be a unit of heating value equivalent to 85,000 B.T.U.

Rate per Meter per Month

First 5 Toledo gas units, or less 25.0¢ per unit.

Excess over 5 Toledo gas units, 5.5¢ per unit.

Minimum monthly charge, $1.25.

A delayed payment charge of 5 per cent but which in no instance shall be less than 10 cents, shall be added to the above charge if not paid within ten days after the bill for the monthly reading period has been issued.

the testimony and exhibits offered and introduced in evidence upon such hearing, the motions of the city of Toledo and of the commissioners of Lucas county, Ohio, and the argument of counsel.

The Commission, being fully advised in the premises, finds:

That said The Northwestern Ohio Natural Gas Company is engaged in the business of supplying natural gas for lighting, power, and heating purposes to consumers within the city of Toledo, and is a natural gas company, serving approximately 60,000 customers.

That said The Northwestern Ohio Natural Gas Company began and continues to carry on its operations as a natural gas company in said city of Toledo under and by virtue of an indeterminate franchise granted it, or its predecessors, by said city.

That said The Ohio Fuel Gas Company is engaged in the business of supplying artificial or mixed gas for lighting, power, and heating purposes to consumers in the city of Toledo, serving some 12,000 customers, and is a gas company as defined by statute.

That said The Ohio Fuel Gas Company began its operations as a gas company in said city of Toledo under and by virtue of a franchise granted to its predecessor by said city in the year 1854; said franchise was for a period of ten years and has long since expired; that such operations or distribution of artificial or mixed gas by said company has for many years last past, and for many years after the expiration of said franchise been, and still is, confined to a comparatively small portion or area of said city and has not been provided to all portions nor to all the citizens of said city; that said operation and business on the part of said company has been permitted solely by sufferance on the part of said city and that the city of Toledo is not in any way estopped to resist and object to or to deny any right of extension of the business of said company in the distribution of artificial or mixed gas to citizens of said city in territory not now served by it in said city.

That said The Ohio Fuel Gas Company, upon acquiring the property of The Northwestern Ohio Natural Gas Company, will not furnish and supply natural gas in the city of Toledo, but proposes to and will confine its busi-

ness to that of supplying a mixed gas (a gas consisting of a mixture of artificial gas and natural gas), to the consumers of gas in said city of Toledo consisting of the present 60,000 users of natural gas and 12,000 users of artificial or mixed gas, the proposed mixed gas to have a heat content varying from 850 to 1,000 B.T.U. per cubic foot; and proposes to charge for such gas a rate higher than that now charged the present users of natural gas and somewhat lower than that now charged the present users of artificial or mixed gas;

That no franchise has been granted to nor are any rights possessed by The Ohio Fuel Gas Company for the extension, in face of opposition by the city of Toledo, of its present service of artificial or mixed gas or proposed service of mixed gas to the citizens of said city and said The Ohio Fuel Gas Company would, therefore, if authorized to acquire the said property of The Northwestern Ohio Natural Gas Company, be without right, franchise, or other authority to engage in the business of supplying mixed gas as proposed by it to the citizens of said city served by such facilities.

And upon consideration of the foregoing, the Commission not being satisfied that The Ohio Fuel Gas Company can lawfully operate, in connection with the property it now owns and operates in the city of Toledo, the property sought to be acquired from The Northwestern Ohio Natural Gas Company in the manner and for the purposes desired, and not being satisfied the prayers of the petition herein should be granted or that the proposed abandonment or withdrawal of natural gas service is reasonable, having due regard for the welfare of the public and the cost of operating said service, it is,

Ordered, that the authority asked in said application be and hereby the same is denied.

To which order of the Commission denying their said application and dismissing their said petition, said The Ohio Fuel Gas Company and said The Northwestern Ohio Natural Gas Company each then excepted, here now except, and their exceptions here are noted of record.

DUNLAVY, Commissioner, in separate opinion: On the 29th day of April, 1937, the above-entitled application was filed with the Commission where in effect the said The Ohio Fuel Gas Company made application to purchase from The Northwestern Ohio Natural Gas Company the natural gas distribution plant in Toledo, and to issue some 60,000 shares plus of its common capital stock for the acquisition thereof.

The Ohio Fuel Gas Company is furnishing artificial gas in the city of Toledo to approximately 12,000 consumers, and The Northwestern Ohio Natural Gas Company is selling natural gas to approximately 60,000 consumers. Substantially all of these 72,000 users of gas are inhabitants, citizens, and residents of the city of Toledo, Ohio. This joint and separate application of the two companies was, in substance, an application to furnish mixed gas to all of the consumers above referred to.

There had been pending before this Commission an application on the part of The Ohio Fuel Gas Company to increase and have a modification of

rate of manufactured gas for those 12,000 consumers above referred to. This application for increase and modification of rate to the consumers of manufactured gas was filed before this Commission October 4, 1935; that the same was before the Commission on various phases involved therein and eventually, to wit; on the 16th day of April, 1937, an entry was agreed to, signed by the law firm of Eagleson & Laylin, representing The Ohio Fuel Gas Company, and by Martin S. Dodd and the firm of Bricker, Power & Barton, representing the city of Toledo, Ohio. This order was approved by The Public Utilities Commission of Ohio and entered as of the 16th day of April, 1937, and is now in full force and effect in the city of Toledo, Ohio. This order, or I might say, approved order, which was agreed to by the city and by the company, fixing the maximum rate for manufactured gas which was to contain not less than 600 B.T.U. per cubic foot, and said schedule of rates were substantially as follows:

30¢ per 100 cu. ft. for the first 500
10¢ per 100 cu. ft. for the next 1,500
7½¢ per 100 cu. ft. for the next 3,000
6½¢ per 100 cu. ft. for the next 195,000 and
5½¢ per 100 cu. ft. for all in excess of 200,000.

A minimum charge for each consumer for each month of $1.50 was to prevail. A delayed payment charge of 5 per cent, which in no instance shall be less than 10 cents, was to be added to the above charge if not paid within ten days after the bill for the monthly reading period had been issued.

I cite this agreed entry or order for the purpose of comparison with what the users of natural gas must pay either under the rate now in effect or hereinafter to become effective, and one can readily notice that the charge for the artificial gas with only approximately one half the heating unit is much in excess of the price for natural gas.

The Commission has concluded that the joint application for purchase and sale, and the initiating of a mixed gas service for all of the consumers, both artificial and natural, in the city of Toledo should not be permitted *under the application thus on file for that purpose.* The Commission, after a full hearing on this matter, has decided that this disposition be made of the application. This, of course, does not prevent the city from so doing, if it sees fit.

The Ohio Fuel Gas Company has a large investment in the city of Toledo and whether it is operating either under an old ordinance of many years standing, which was obtained by its predecessor, or under mere sufferance by the city of Toledo, seems to be not so material. The fact remains that it is established in said city either under one method or the other, and under the law of Ohio cannot be disturbed or removed without the consent of the Public Utilities Commission of Ohio. The evidence is quite conclusive that the city has known of its activities and its service to the public and has joined with the company in the making of extensions and repairs and various sundry uses of the streets and alleys in the service to the people in said city of Toledo. All of these operations on the part of the company have been, to say the least, in accordance with the use of its property dedicated to public service for the purpose

of serving artificial gas to the twelve thousand inhabitants above referred to, so that there can be no question but that The Ohio Fuel Gas Company is using the streets, alleys, and other rights in connection with the operation of its artificial gas plant legally This is particularly true in that an agreed rate and order was entered into by the city and the company in accordance with the Entry filed with the Public Utilities Commission of Ohio as of April 16, 1937, fixing the rates therein agreed to.

The unfortunate thing concerning this joint application to buy and sell and furnish a mixed gas service, and its denial by the Commission is that it by no means settles the gas question in the city of Toledo, and it seems, in justice to all of the inhabitants that the question as to a proper service at a reasonable rate should be determined at the least cost to the municipality and to the company, and that there is a problem in the city of Toledo which should not be played with but should be decisively handled and determined as promptly as possible, taking into consideration all of the elements there involved.

The Public Utilities Commission of Ohio is a statutory body having only such power as is given to it by the statutes of the state of Ohio and beyond which it cannot go. The application for the change of rates in the artificial plant has been disposed of as far as this Commission is concerned and now the order is in effect in said city. This joint application is now disposed of so far as the Commission is concerned, but there is still pending before the Commission not less than two cases involving the price of natural gas to be served in said city. The supreme court of Ohio has recently decided that an application of the company to the Commission to fix a fair and reasonable rate passes out of the picture whenever an ordinance is passed by the city of Toledo after the application was filed before the Commission. I have reference to the recent decision in the Norwalk Case (20 P.U.R.(N.S.) 284 [23 P.U.R. (N.S.) —, 13 N. E. (2d) 721]). So one can readily see that the gas problem is far from being concluded in the city.

This Commission has no equity powers, but purely statutory powers, given it expressly by the legislature. It is of interest to note that in the hearing on this joint application evidence was introduced which disclosed the fact that there is another important question involved in this gas matter over which perhaps this Commission has very little, if any, authority to control, but yet it seems it is a material element for the city of Toledo to take into consideration in working out some satisfactory adjustment of the problem involved. I refer to the testimony of Mr. Edward L. Clair, manager of the Interlake Iron Corporation of Toledo. Here is a large blast furnace industry, employing more than 500 men; has had no strikes, at least recently, and has been operating quite steadily for many years. It has a total yearly payroll of more than $950,000 and pays local taxes of more than $57,000. Its local purchases involves more than $260,000 and its total purchases, other than raw materials, amounts to more than $780,000 and the value of its raw materials consumed including coal, amounts to more than $5,000,000.

Total in-bound freight amounts to nearly $2,500,000, and out-bound freight more than $615,000.

It seems to me that this industry affects materially the industrial situation in the city of Toledo and is an important factor which the city of Toledo should take into account in the handling of this problem. I say this based upon the evidence because the manager testified that the sale of the by-product from this blast furnace industry in the way of artificial gas to The Ohio Fuel Gas Company at the rate of 14.17 cents per thousand cubic feet amounted to approximately $450,000 in 1936. He testified further that this was an important factor in the operation of this large industry and that there is in existence a contract with The Ohio Fuel Gas Company to purchase this by-product for a term which expires, according to my recollection, in 1947.

I can conceive of the possible loss of this industry to Toledo and perhaps a very large law suit as against The Ohio Fuel Gas Company if it failed to use this gas in accordance with its contract, and I can see that the city of Toledo has some responsibility in connection with this condition, as it has permitted and countenanced the artificial gas business from its inception up to and including the 16th day of April, 1937, when it agreed to a price on this product to the consumers in the city of Toledo.

Section 3989 of the General Code of Ohio provides, among other things, that where artificial gas is to be used that the municipality should retain unto itself the right to determine the quality of said gas and also the kind of meter to be used. This would give to the city of Toledo, in the fixing of a gas ordinance, a right to do certain things in connection with its gas service, if it so decided.

So far as the consumer is concerned, what he is primarily interested in is, first, heat units, and second, a fair price. The consumer doesn't care particularly whether it is natural, artificial, mixed or what not if he gets the proper heating facility and unit at the proper price. Measuring devices are now accessible for measuring heat units and, after all, that is what one should pay for. When you use the cubic foot measurement you can readily see what happens. When a cubic foot of artificial gas goes through the meter, it delivers only 600 B.T.U. or British thermals of heat, and when a cubic foot of natural gas goes through your meter, it delivers approximately twice as many heat units in the same measurement, or 1,050 B.T.U. So that it does not take any heavy or weighty degree of intelligence to understand that measuring by the cubic foot is not the right and proper standard in buying of gas. Great Britain awakened to this fact nearly twenty years ago and since 1918 has been regulating the price of its gas on the British thermal unit or heat unit basis.

To me it is an outrage that the consumers of artificial gas in the city of Toledo are compelled to pay the price for artificial gas, to wit: nearly three times as much with half the heat units, as the users of natural gas. It seems that all the citizens of the city of Toledo are entitled to equal rights and that it is not only the duty of the city and the company to see that these peo-

ple are equally and fairly treated, but is also the duty of the 60,000 users of natural gas to be fair and considerate as to their 12,000 brother citizens who happen to be living along the lines of the artificial gas distribution system.

I do not want to be misunderstood that the natural gas advantages should be entirely sacrificed for the benefit of the artificial users, but what I mean to convey is that, in my opinion, a fair rate should be fixed for both, and I feel that it could be done on a heat unit basis and rates adjusted accordingly to bring this about. By the use of a therm measuring device, which measures the heat units, the artificial users of gas would pay for the heat units they use and the natural gas users would pay for the heat units they use. I doubt very much the authority of the Commission where artificial gas is being used, and when I say artificial gas, I include mixed gas, to fix the quality or designate the measuring device, and on that basis I concur in the opinion of the Commission that it has no authority to force upon the citizens in the city of Toledo, in the first instance, this new service, but I can readily see how the city of Toledo could, under the authority granted it by statute, agree that either a mixed gas service be given or that the artificial plant could operate and the natural gas plant operate and if each were utilized on the basis of selling heat units to the consumers, an equitable and fair rate could be worked out and thus all of the people of the city of Toledo have a solution to the gas problem that now exists and which is far from being solved in this particular proceeding.

The Bureau of Standards at Washington says that the only fair and proper way to sell gas, either artificial or natural, is on the heat unit basis, but adds that the public is not sufficiently cognizant of the methods as yet and are afraid to adopt the new method.

This Commission has no authority to grant a franchise and can only meet the problems that come before it in the manner provided by law. The officials in the city of Toledo are reasonable men of intelligence and if they will sit down with their advisers and with the officials of the company, they are just as competent to handle this question as is any member of the Commission or the Commission in its entirety, and I am sure it could be more promptly reached in this manner.

CONNECTICUT PUBLIC UTILITIES COMMISSION

Re Mystic Valley Water Company

[Docket No. 6569.]

Service, § 473 — Water — Industrial users — Storage facilities of customer.

1. Installation of storage tanks by an industrial user of water, to provide maximum draught of water and a reserve for fire protection, is not an indication that the water supply is inadequate when there is no evidence to

show a lack of continuity or insufficiency of flow during a period of several hours, since such reserve capacity is commonly expected in the case of industries requiring an abnormal volume in a brief period, p. 26.

Return, § 22 — Maintenance of service — Plant improvement.

2. Aside from the rights of a water company to receive adequate return on improvements made pursuant to the expressed desires of patrons and orders of the Commission, an injustice would be done if an inadequate return be ordered by the Commission, not only to the company but very likely also to the public it serves, since the continuation of good service depends to a great extent on the revenues from rates, p. 27.

Valuation, § 210 — Standby pumping equipment.

3. Standby pumping equipment should be included as used or useful in the public service, when a water utility would be obliged to provide some such equipment for emergency fire protection service, even though the equipment is old and its value is not of great amount, p. 28.

Valuation, § 193 — Property used or useful — Unused pipe lines.

4. A river pipe crossing of a water utility cannot be considered as used and useful in the public service, and its cost should, therefore, be excluded from the original cost and from the estimate of reproduction cost when, after springing a leak, the pipe was shut off and has not been used, tested, or flushed out by the company and it is not practicable to repair it, p. 28.

Valuation, § 216 — Unused real estate — Construction site.

5. A lot purchased several years ago by a water utility to be used for construction of an additional reservoir or standpipe must be considered as not used or useful property when it has not been so used, p. 28.

Valuation, § 237 — Property rented to employee.

6. An engineer's house and garage rented by a water utility company to an employee, from which the company receives revenue should be considered as property not used and useful in the public service, p. 28.

Rates, § 296 — Minimum bill — Combination of meter and water charge.

7. A combination of meter and water charge in a periodical minimum bill is more acceptable than a minimum rate as a meter charge separate from any water consumed, p. 29.

Rates, § 314 — Combined billing — Theoretical meter charge — Industrial consumers.

8. Substitution of a theoretical meter charge for the combination of the proper charges for the actual meters in computing water charges for large industrial consumers does not have the approval of the Commission, since it is difficult to determine the extent to which such a practice may be restricted and avoid discrimination; the computation of earnings should be made by considering each meter as a separate unit but combining the amounts of water taken at one customer's premises, p. 30.

Rates, § 151 — Reasonableness — Comparison — Present and past rates.

9. Comparison of proposed rates and those formerly charged is no more conclusive that the new charges are higher than they should be than that the old charges have been too low, p. 32.

Rates, § 619 — Public fire protection — Proximity of natural sources of supply.

10. Consideration of the proximity of natural sources of water supply is

improper in determining the amount of revenue to be allocated to public fire protection service, since this would involve no more than a mere estimate of its value, indeterminate and not fair to consider, and besides if this were done in order to provide the necessary return, the rates and charges for other classes of service would have to be increased to make up the amount of the assumed reduction; and, furthermore, it might fairly be conceived that if this auxiliary service were not available, the company's plant might have been larger and the charges for all classes of service made greater thereby, p. 32.

Rates, § 130 — Adequacy of service — Fire protection.

11. Fire protection service is worthy of fair compensation even though it does not attain desired standards, p. 34.

Rates, § 134 — Comparison — Fire-hydrant rates.

12. Comparisons of fire-hydrant rates in different communities, although interesting, are not significant as to whether any rate is too high or too low, p. 34.

Rates, § 621 — Fire protection charges — Inch-foot basis.

13. Fire protection charges, except possibly in special cases, should be computed on the inch-foot basis with an added nominal charge per hydrant to serve as direct compensation for rental, inspection, and maintenance, p. 35.

Rates, § 148 — Reasonableness — Dividend payments.

14. Dividends paid by a public utility have no bearing upon the determination of fair value or rate of return, p. 36.

Rates, § 124 — Reasonableness — Effect of receivership proceedings — Fair value and return.

15. Receivership proceedings resulting in purchase of property by a water utility company can have no bearing in the determination of fair value of the property of the company for rate-making purposes or fair return thereon, p. 37.

Rates, § 153 — Reasonableness — Intercorporate relations.

16. Financial obligations of an operating company to its parent holding company or to others are of no moment in the determination of fair value or the fair return thereon, p. 37.

Expenses, § 84 — Payment to holding company — Management.

17. The expense of nonresident supervision of a relatively small public utility property, the advantage of which must accrue largely to the holding company, should be borne by the holding company and ratepayers should not be charged any more than a reasonable amount for general and miscellaneous expenses, p. 38.

Rates, § 622 — Public fire protection — Increase to compensate for tax burden.

18. An increase in local taxes assessed against a utility, which results in such a substantial increase in the utility's expenses as to warrant an increase in rates, can most fairly be offset by an increase in the charge for fire protection service in the community served, p. 39.

Valuation, § 29 — Comparison of fixed capital — Different companies.

19. A comparison of the amount of fixed capital of different companies serving substantially the same population cannot be justified, in view of the different conditions under which they may operate, p. 41.

Depreciation, § 22 — Arbitrary allowance — Relation to operating revenues.

20. Determination of annual depreciation accrual by setting up an amount calculated on the basis of 12½ per cent of operating revenues of a water utility, less the amount of expenditures for maintenance, was held to be unscientific and without merit, p. 41.

Depreciation, § 26 — Inadequate reserve — Annual allowance.

21. Ratepayers of the present day should not be required to pay for past deficiencies in creating a depreciation reserve, p. 42.

Revenues, § 2 — Estimates.

22. It is not reasonable, especially in the face of declining operating income, to determine from the average of the operating income over a period of years any estimate of what the minimum amount should be, p. 46.

Return, § 115 — Water utility.

23. A return of 6 per cent was established as a fair rate of return for a water utility, but the Commission determined that the company should not receive more than the return it had requested, which represented 5.6 per cent on the fair value determined, p. 46.

[March 15, 1938.]

INVESTIGATION *of rates of a water utility company; rate schedules established.*

APPEARANCES: Edward M. Day, for the Mystic Valley Water Company; Frank L. McGuire and Francis F. McGuire, for the Rossie Velvet Company and the American Velvet Company; Benjamin H. Hewitt, for the Mystic fire district; Robert P. Anderson, for the borough of Stonington.

By the COMMISSION: In Docket No. 6093 the Commission issued to the Mystic Valley Water Company an order dated December 10, 1934 and a further order dated January 30, 1935, establishing rates for all its water service for domestic, commercial, and industrial consumers, but without change in rates for fire protection, either public or private, to be applied by that company after it had complied with the Commission's order for the installation of a filtration plant and meters, said rates to be effective for a sufficient period to determine the company's earnings thereunder.

A 12-month period of operation under these new rates, ending June 30, 1936, with all service metered, resulted in operating revenue of $71,060 and operating income of $27,811. After the completion of this 12-month period the company made an analysis of its consumption data and revenues therefrom and separate studies thereof were made both by the company and by the chief engineer of the Commission. Further similar studies were made after the consumption data for the ensuing quarter, ending September 30, 1936, were available. The report in this matter, made by the Commission's chief engineer, E. Irvine Rudd, dated November 5, 1936, and made a part of the record in this proceeding, indicated the revenue

under the present rates and suggested a new revised schedule of rates to yield a slightly larger revenue.

It should be noted, however, that these rate studies by the company and the Commission's chief engineer were accomplished without any determination of fair value of the company's property, and that the estimate of required operating revenues was based only upon the company's expenses and a reasonable return upon the amount of fixed capital, plus materials and supplies and working capital.

The company felt that this schedule, suggested by the Commission's engineer, was not altogether satisfactory and should be modified and, therefore, the company on September 22, 1937, filed a new schedule of rates to be effective November 1, 1937, and thereafter, on October 5, 1937, the Commission, on its own motion, gave notice to all interested parties that it would hold a hearing on October 18, 1937, when all might be heard in this matter. This action by the Commission served to act as a stay and suspended the application of the proposed rates until further order by this Commission with respect thereto, so that at present the rates prescribed by the Commission in Docket No. 6093 are still in effect. The hearing was held and was continued until October 27, 1937, and again until November 15, 16, 17, and November 18, 1937, when it was concluded. On December 13, 1937, a memorandum was filed with the Commission by Roscoe K. Burrows, who is clerk of the board of selectmen of the town of Stonington, and thereafter the five parties in interest each filed a brief, the Rossie Velvet Company and the American Velvet Company on December 23, 1937, and the Mystic fire district, the borough of Stonington, and the company on December 27, 1937.

The Commission proposes hereinafter, in connection with this finding, to consider and discuss at length many features of the evidence introduced, to the end that a better understanding may be reached with respect to those items bearing directly upon the determination of the fair value of the company's property used and useful in the public service, the fair rate of return thereon, the allocation of charges to the several classes of service, and the schedule of rates for each class required to produce the operating revenues adequate to meet the company's necessary operating expenses and yield the return allowed.

While the discussion may appear unnecessarily long, especially with respect to some matters not directly relevant or only indirectly so, it will be fully carried out not only because of the very general interest of parties in the communities representing each class of water service involved, but also because it seems desirable to clear away the confusion which may arise if the development of a finding is confined closely to a consideration and discussion of the matters which are strictly relevant to the Commission's determination.

Description of the Property

The Mystic Valley Water Company, a Connecticut corporation, was organized in 1887 and the system began operation in 1888, the original construction being completed in 1889. Since then it has been extended and improved

from time to time, as hereinafter outlined, so that it now serves about 999 customers in the Mystic fire district, within the town of Stonington, and to a small extent the town of Groton, and about 609 in the town of Stonington and the borough of Stonington.

The source of supply is Copp's brook, the water from which is collected in two reservoirs, each with a dam, Dean's pond above, and Palmer's pond below, all in Stonington, with total storage capacity of 120,000,000 gallons. The water from Palmer pond is passed through the filtration plant for removing color, taste, and vegetable matter, and after chlorination is pumped into the distribution reservoir, located near Montauk avenue, with storage capacity of 2,000,000 gallons. An elevated tank west of the Mystic river on a hill in Mystic serves as a supplemental reservoir with storage capacity of 100,000 gallons. From the distribution reservoir one 10-inch main extends southeasterly about 2 miles to Stonington and another 10-inch main southwesterly about 2¼ miles to Mystic. The distribution systems in Stonington and Mystic consist of cast iron, wrought iron, and galvanized steel pipe.

Fire protection service is afforded these communities through 152 hydrants, 98 in Mystic, and 54 in Stonington.

The watershed tributary to the company's reservoirs has an area of about 6 square miles, with a safe yield of about 750,000 gallons per day in a dry season and is estimated to sustain an average draught of 1,000,000 gallons daily, which appears adequate as the average daily consumption was 633,000 gallons for the year 1936 and 884,000 gallons for August, 1936, the month of the highest consumption.

Improvements in the Company's Plant

The record and order in Docket No. 4439, issued by this Commission under date of May 4, 1925, P.U.R. 1925D, 385, were made a part of the instant proceeding. In that Docket the Commission recommended the installation of meters to conserve the use of water.

It appeared in evidence in that case, and in Docket No. 5093, that the storage capacity of the company's plant (then estimated to be 60,000,000 gallons) was inadequate not only for the purpose of the largest industrial users of water, the Rossie Velvet Company, the American Velvet Company, and the Atwood Machine Company, but also for the Standard Machine Company and other consumers taking smaller quantities; the Rossie Velvet Company claiming that the operation of its dye-house involved the use of a large volume of water, and the American Velvet Company claiming that its use of water in its dye-house then and in the future would substantially equal the amount of water used by all other patrons of the company in the borough of Stonington and that the requirements would exceed the then storage capacity of the company.

In Docket No. 5093 these parties and the borough of Stonington, the town of Stonington, and the Mystic fire district, joined in the petition for increased storage capacity, not only for general purposes but also to provide better fire protection service, because the company had failed to fully comply with the Commission's order

for increased storage capacity, since it had not enlarged the Palmer pond dam as ordered in Docket No. 4439. Pursuant to the Commission's original and supplemental orders in Docket No. 5093, made in 1928, the company enlarged the Palmer pond dam in 1929 which thereafter and now provides 120,000,000 gallons storage capacity, and while this did not improve the water pressure, fire protection service had been improved by the installation of a standpipe and 10-inch main in 1927, which increased the available water pressure, and was further improved on account of the added storage of water in 1929.

The enlargement of the Palmer pond dam was done at an expense stated to be about $92,800, which was considerably in excess of the estimate in advance of construction, and though question was raised as to the substantial amount of the expenditure, it does not appear to be excessive in the opinion of the Commission's engineers, in consideration of the estimated reproduction cost of about $98,000 based on 1929 prices submitted by the company's engineer and since there is no evidence that the work might have been done for a lesser amount.

It is within the knowledge of the Commission's engineers that when the Palmer dam was rebuilt it was found that the old dam could not be extended and improved and the company removed a very substantial part of it. But there is no indication in the subsequent reports to the Commission that any part of the cost of this old dam was retired from the fixed capital account and charged to the depreciation reserve, so it is a fair assumption that it still remains; and this will be taken into consideration in the use of the amount of fixed capital as an index of fair value.

The increase in rates authorized by the Commission in Docket No. 4439 was by reason of the necessity of meeting the increased expense to the company on account of the improvements then contemplated and ordered by the Commission though not fully completed until 1929 as hereinbefore mentioned.

On June 1, 1935, the company put into operation a filtration plant which it had installed pursuant to the order of the Commission in Docket No. 6093 in order to improve the quality of the water not only for the benefit of its residential patrons but also for use in the two velvet plants; and in 1935 the company installed meters for all of its consumers, which were petitioned for by a large number of the consumers and was conceded by the company to be desirable as appears in Docket No. 6093, and in the order supplemental thereto a revised schedule of rates was prescribed for the metered service as hereinbefore noted.

At a conference in the office of the Commission, when the installation of a filtration plant was under consideration, the company's representatives brought out that the two velvet companies were taking substantially 40 per cent of the company's water and that if their use of water was not to be continued the company would find itself with a large excess of plant capacity which might thus be created after the filtration plant had been installed and the company especially desired to avoid possible loss to its investors by the excess expenditure in amount about $20,000 by which the

cost of the filtration plant could be reduced if filtration of the volume of water consumed by the velvet companies was not to be provided.

All the improvements made since 1925 have been definitely and entirely for the benefit of the communities and their residents and industries, with the possible exception of the installation of meters (recommended by the Commission in Docket No. 4439, and in Docket No. 6093, especially urged by consumers as hereinbefore mentioned) as to which there is also some benefit to the company's operations in the curtailment of waste of water which is important where filtration and pumping is involved.

Though the filtration plant is adequate to meet the maximum draught, it cannot now be considered to have more than adequate capacity, since it must provide sufficient capacity to meet the requirement of a heavy draught of water in event of fire for it would be unsafe to bypass the plant in case a fire required use of an unusual volume of water.

Adequacy of Water Supply

[1] While it appeared that the Rossie Velvet Company had installed two 100,000-gallon storage tanks to provide for its maximum draught of water and a 34,000 gallon tank for a sprinkler reserve, this is quite common practice with some industries especially those manufacturing textiles which require an abnormal volume in a brief period and it is not an indication that the water supply is inadequate since there was no supporting evidence to show a lack of continuity or insufficiency of flow during a period of several hours.

It appeared that after the water company installed its filtration plant the Rossie Velvet Company still continued the use of sand filters though it had to some extent reduced its filtration of water, and also that the Rossie Velvet Company had abandoned consideration of the installation of wells for supply of its water requirements for manufacturing. Due to the increase in the water company's storage capacity and to the Rossie Velvet Company's storage tanks the present water requirements for the latter's plant appear to be fully met.

The American Velvet Company claimed that it does not now receive the amount of water it requires to properly operate its plant economically, the demand for which it pays is not delivered, and the capacity it requires is not available; that it would use more water if it could be obtained from the water company. It further expressed the opinion that the water company had an ample supply and pumping capacity, but that the distribution mains leading to its velvet plant are of inadequate capacity.

It appeared that the American Velvet Company is planning to spend between $10,000 and $12,000 for the erection of a combination standpipe or fire tank and reservoir on its property which will be filled at off-peak periods when water is not being heavily drawn for other plant use and which will provide the necessary reserve capacity, and that this plan is considered preferable to the installation of a large main from the water company's 10-inch line, a distance of about 3,000 feet. This does not necessarily indicate a deficiency in the water company's plant capacity for it is general-

ly to be expected that a sprinkler system will not operate properly without local plant water storage capacity available for it, except in unusual cases where there are very large water mains to yield a voluminous supply.

Local Well Supply

It is within the knowledge of the Commission that one consumer in the domestic and commercial class has installed a private well water supply within the limits of his property for use in lieu of the company's service. However, such a plan cannot be generally adopted not only on account of the expense involved but also because of the continuing care required to insure that the alternate supply is not a menace to health.

Volume of Industrial Consumption

In 1936, $15,304 or 95 per cent of revenue from industrial consumers was from the three largest industries, and their heaviest average daily draughts in any month were as follows:

	Gallons
American Velvet Company (August 1936)	167,000
Rossie Velvet Company (August 1936)	402,000
Atwood Machine Company (April 1936)	20,000
A total of	589,000

The other industries which use a lesser volume of water are Parker Manufacturing Company, Standard Machinery Company, and a silk manufacturing company in Mystic.

Plant Not Overdeveloped

[2] The company offered testimony to indicate that the plant was properly designed and constructed and not overdeveloped, and, in the opinion of the Commission's engineers, there is no indication that the company has overdeveloped its plant in any respect; furthermore it is within the knowledge of the Commission that the owners of the property were reluctant to make the capital expenditures desired by its patrons in 1925 and 1935 and required for the rendering of adequate service and furnishing safe and potable water for its patrons until all these improvements and their effect upon rates had been fully considered and an order thereon issued by the Commission.

The primary consideration in the regulation of a water company is the rendering of proper service and in this case, pursuant to the expressed desires of the patrons and orders of the Commission, the company has made all the required improvements in its plant for rendering proper service to its customers and aside from the rights of the company to receive adequate return an injustice would be done should an inadequate return be ordered by the Commission, not only to the company but very likely also to the public it serves, since the continuation of good service depends to a great extent on the revenues from rates.

The plant of the Rossie Velvet Company is now closed for the purpose of liquidation of the property, but the Commission considers it unnecessary in this case to determine whether the water company's plant would be overdeveloped in event the Rossie Velvet Company's plant should not be reopened; that situation can be met if and when it arises; it seems unlikely, however, that a manufacturing plant of this type, adequately equipped and

with good water supply, will long remain idle.

Standby Equipment

[3] The usefulness of the standby pumping equipment was questioned but in the opinion of the Commission's engineers it cannot fairly be considered as not used or useful in the public service since the company would be obligated to provide some such equipment for emergency fire protection service, and even though it is old it must be considered of some value, though not of great amount.

Property Not Used and Useful

[4–6] The original river pipe crossing, built in 1888, was retired from fixed capital account in 1931 at an estimated original cost of $4,000, and is not included in the inventory hereinafter referred to and needs no comment.

In 1928, a second crossing was laid under the river which, with its connections on land constituted a 10-inch pipe line from Greenman Hill avenue and Mistuxet avenue northerly along Greenman Hill avenue to a point north of Bruggerman street, thence westerly to the Mystic river and across it to Star lane and along Star lane to High street in Mystic, and it appeared that this improvement cost $17,931.

This second line across the river, termed the Northerly river crossing, was admitted by the company to have sprung a leak and in order to save waste of water the pipe was shut off July 9, 1931, and it has not been used since nor has it been tested or flushed out by the company, and the Commission's engineers believe it is not practicable to repair it. It cannot be considered as used and useful in the publice service and its cost should, therefore, be excluded from the original cost and from the estimate of reproduction cost.

The company's engineer estimated the present cost to reproduce the 10-inch Northerly river crossing proper, 1,463 feet in length, hereinbefore determined to be not used or useful property, at $10,128, and estimated its original cost at $11,197.

Of the two pipes in Greenman Hill avenue one leads to the Northerly river crossing and the other is a 6-inch main for regular service, but as both were stated to be in use for service these two pipes must be fairly considered as used and useful property.

Though the Starr lot east of the water tower in Mystic was purchased in 1929 for the sum of $1,891.98 to be used for construction of an additional reservoir or standpipe it has not been so used and must be considered as not used or useful property. It is included in the fixed capital account but was not included in the inventory of the company's property used as the basis of its reproduction cost appraisal.

The engineer's house and garage are rented to an employee of the company and as the company receives revenue therefrom these buildings and the land on which they stand should be considered as property not used and useful in the public service; they were in the company's estimate of reproduction cost, were shown as a separate item in the company's statement of fixed capital and were omitted by the Commission's engineers from their appraisal.

The contract under which the company's plant was first constructed pro-

vided for the laying of an 8-inch pipe line 5,450 feet long from the company's main to the railroad company's reservoir to serve as an auxiliary supply. This pipe line is not now in use and has not been for several years, but there is no record of its retirement from the fixed capital account nor of its charge to the depreciation reserve in the reports of the company to the Commission so it must be presumed to be still included in the amount of fixed capital and this will be given consideration in the use of the amount of fixed capital as an index of fair value.

These several items have been dealt with hereinafter.

Condition of the Property

Questions raised as to neglect of subsidiaries by a holding company in so far as they relate to this water company need not be considered for it appears from the report following the inspection of the property made by the Commission's engineers that there is no present indication of any neglect of maintenance in the company's plant and equipment.

During the hearing question was raised with regard to the introduction of chemicals into the water by the company and though this has no bearing in the determination of rates it seems fitting to observe that all such operations are properly supervised under the direction of the state department of health.

Company's Proposed Rates

[7] The company indicated that it first intended to establish its new rates to yield a return of 6 per cent on the amount of its fixed capital, plus an estimated amount for materials and supplies and working capital, and claimed that its proposed schedule of lower rates as filed and here in question, estimated to yield only 5.2 per cent thereon, were established in order to obtain merely sufficient revenue to meet the company's immediate needs and avoid too great an increase for domestic, commercial, and industrial consumers and for fire protection.

The company estimated the annual operating revenues under this schedule of rates to be $78,387 and with operating expenses estimated by it at $43,143 the rates would yield operating income of $35,244 which is 5.2 per cent on $677,773.

The only change of moment in the charge for residential and commercial consumers under the company's proposed schedule of rates is that the quarterly minimum bill would include 300 cubic feet of water as well as the meter charge. The service or meter charge is intended to include costs not directly related to the amount of water taken, namely, interest and depreciation on the meter and its installation, inspection, maintenance, and replacement and customer costs for meter reading, billing, collecting, and accounting. While in some other cases the Commission has prescribed a minimum rate as a meter charge separate from any water consumed, it appears that a combination is generally more acceptable and the Commission will in this case so prescribe as minimum, a combination of meter and water charge.

In the company's proposed rate schedule the industrial charges were established to yield about 27 per cent of the total operating revenue, and those for fire protection to yield about

15 per cent, with 58 per cent to be produced from domestic and commercial service and private fire protection, these percentages being substantially the same as recommended to the company by its consulting engineer, C. M. Blair.

[8] In the company's computations of the charges for the three largest industrial consumers, each of which has more than one service connection, the water was assumed to be taken through one meter of adequate size, which thereby would establish a theoretical meter size and charge and combine the water consumed, thus eliminating duplication of charges by separate meters in the lower steps of the block rate.

The substitution of a theoretical meter charge for the combination of the proper charges for the actual meters does not have the approval of the Commission since it is difficult to determine the extent to which such a practice may be restricted and avoid discrimination, and for this reason the computation of earnings under the rates hereinafter prescribed by the Commission has been made by the Commission's engineers considering each meter as a separate unit, but combining the amounts of water taken at one customer's premises as permitted under Docket No. 5900.

Increase in Charges under Proposed Rates

The quarterly charges under the company's proposed rates would result in an increase of from 5 cents to 45 cents for domestic and commercial consumers using from 400 cubic feet up to 10,000 cubic feet of water quarterly, those using 300 cubic feet would have no increase and the increase for those using less than 300 cubic feet would run from 40 cents to $1.20, these last representing about 8 per cent of all bills rendered for this class of service, and the increase for them would result from the combination of the meter and water charge in a higher minimum to which reference has hereinbefore been made.

Based on the consumption data indicating the amount of use in 1936, the water charges under the proposed rates for the three largest industrial consumers would be increased from $15,305 to $20,405 per year, for the two velvet companies from $14,407 to $18,952, about 30 per cent; and the total revenue from all industrial consumers would be increased from $16,241 to $22,700. These figures differ slightly from the revenues in the company's report. While the company claimed that this increase in rates would result in total charges to the velvet companies less than the amounts paid by them in 1935 when their production of velvet was less than in 1936, one of the velvet companies introduced evidence indicating that the volume of water used in the velvet manufacturing process does not necessarily vary directly with the yardage of velvet produced, but chiefly on account of the number of processes required for the different colors and types of velvet manufactured. It follows, therefore, that the comparison of volume of use submitted by the water company does not fully indicate that the decrease in use of water by these companies in 1936 was by reason of the water company's filtration, and therefore this cannot be a reasonable justification for any substantial

increase in rates for such industrial consumers.

The Atwood Machine Company's annual expense for water, estimated on the basis of consumption in August, 1937, would be increased by $727 from $1,137 to $1,864 or 64 per cent under the proposed rates.

The increases proposed for these industries are substantial and if applied might result in rates higher than the industries would find it convenient to pay, forcing the larger industries sustaining the greatest increase to adopt such methods as were found available to reduce their water consumption and in such case the revenue of the company would be permanently reduced.

It is well known that a reduction in the rates of a public utility, if the consumers are adequately informed, is almost certain to result in an increased use of the service, which will in a short period eliminate or more than offset any loss in the utility's revenue, and it is likewise well known that an increase in rates is generally accompanied by a curtailment in the use of the service which may result in a reduction in revenue greater than the anticipated increase, at least as a temporary condition.

It is always difficult to definitely predict the effect a change in rates will have upon the revenue of any public utility, but as the service rendered by a water company is essentially a necessity, the use of water cannot be curtailed to any great extent to offset an increase in rates nor will a materially larger consumption be induced by a reduction in rates. The effect of a rate change upon the use of service and upon the revenues of a water company is therefore not as marked as for other utilities.

Fair Value Determined in 1925

On account of the time which has elapsed since 1925 when in Docket No. 4439 (P.U.R.1925D, 385) the Commission determined the fair value of the company's plant to be $500,000, and because of the improvements and changes in the plant, the evident overstatement of fixed capital herein referred to, and the differences in labor and material costs, that fair value (found in 1925) cannot now have any real weight and, therefore, will not be considered by the Commission in determining fair value in the instant case.

Fire Protection

The charges determined in 1925 for fire protection service likewise cannot fairly be considered in comparison with the charges as proposed by the company or as hereinafter prescribed by the Commission since these new charges apply to improved conditions brought about by the installation of larger mains, the standpipe and booster station on Mystic Hill, one pump of which is solely for fire protection and also by the installation of improved pumping equipment at the reservoir, all of which justify some increase in the charge for fire protection service.

The charges for public fire protection service as allocated by the company contemplated a primary fixed charge for each district with additional inch-foot charges based on enlargements and extensions of the supply mains and distribution mains as and when made and also with additional hydrant charges for hydrants as and when installed. The primary fixed

amount would be equivalent to an average annual rate of about $73 per hydrant.

[9] Though the fire protection charges now proposed and those hereinafter established are substantially more than those formerly charged, such comparison is no more conclusive that the new charges are higher than they should be than that the old charges have been too low.

[10] The company admitted that in determining the amount of revenue to be allocated to public fire protection service it did not take into consideration the proximity of natural sources of water supply, and it appears improper that such consideration should be given, for to do so would involve no more than a mere estimate of its value, indeterminate and not fair to consider, and besides if this were done in order to provide the necessary return for the company the rates and charges for other classes of service would have to be increased to make up the amount of the assumed reduction. Further it might fairly be conceived that if this auxiliary service were not available the company's plant might have been larger and the charges for all classes of service made greater thereby.

The company's engineer expressed the view that in general the charges for private and public fire service should both be computed on the same basis. His allocation of charges for fire protection service does not appear to be unreasonable.

It was suggested that the fire protection from the system in the Mystic fire district is inadequate because on occasion the fire pumping equipment attached to a hydrant had drawn the pipe dry, but in the opinion of the Commission's engineers this is likely to occur in any system unless the rate of pumping is properly accommodated to the flow of water from the hydrant and in this instance the complaint appears to be not well founded especially as the test of hydrants submitted by the company showed static pressure from 40 to 100 pounds and flow from 240 to 1,010 gallons per minute.

Of the hydrants in the Mystic fire district, 78 show static pressure of 70 pounds or greater and 68 yield a flow of 500 or more gallons per minute; of the 7 hydrants in the Stonington fire district, 4 show static pressure of 74 pounds or greater and 4 yield a flow of 500 or more gallons per minute; of the 47 hydrants in the borough of Stonington, 18 show static pressure of 72 pounds or greater and 30 yield a flow of 500 or more gallons per minute. It is to be noted also that in some instances of static pressure lower than indicated above there is a satisfactory residual pressure under flow as well as a satisfactory flow due to adequate size of main to which the hydrant is attached. From this it appears that in all three areas a generally satisfactory volume of water is available for fire protection if the rate of pumping is accommodated to the flow.

The company's engineer admitted that the availability of water which may be pumped from the Mystic river would be of some use for a limited area in the center of Mystic, but expressed the opinion that it could not be relied upon as the sole means for fire protection even in the central district accessible to it, and that if there were no other means of protection, fire insurance rates would be higher.

Though the company's engineer admitted that the booster pump in Mystic and the installation of larger pipe were of no benefit to the fire protection in Stonington borough, it appeared that the increase of storage capacity provided by the collecting reservoir (the Palmer dam) was of value to the whole system, and it would be quite impractical to segregate parts of such a relatively small system for the determination of different fire protection rates and even if this were done it is doubtful that there would be any substantial difference in the actual rates to be charged.

The possibility of a salt water system for fire protection for the borough of Stonington can have no bearing upon the proper charge which should be made for fire protection, for substantially the same reasons heretofore applied to the available salt water supply in Mystic.

The American Velvet Company through Henry E. Halpin, its expert on fire protection, introduced evidence indicating that he had made surveys and recommendations with respect to several industries but it appeared that this observation did not extend to any of the communities as a whole.

His testimony as to inadequacy of fire protection is indicative that the American Velvet Company, to provide proper water supply for its sprinkler system of about 1,850 sprinkler heads, as hereinbefore referred to, should have an elevated storage tank of 75,000 gallons capacity, and that the cost to provide a fully adequate supply directly from the water company's mains would in comparison be prohibitive.

This expert also indicated he had recommended to the Atwood Machine Company that it should install a suction tank of 150,000 gallons' capacity and a 4-stream pump with rate of 1,000 gallons per minute, and stated that the Machine Company had installed a pump of 1,500 gallons per minute capacity with six fire streams at 100 pounds pressure connected with Stonington Harbor.

He also indicated that in addition to the Rossie Velvet Company's 34,000-gallon storage tank for sprinkler reserve, heretofore mentioned, it had also installed a pump of 750 gallons per minute capacity to take water from the Mystic river for additional fire protection. It appeared that even with this latter installed he would not recommend that the private fire hydrant service from the water company be discontinued unless a larger storage tank were installed.

Though the fire protection service of the other industries was considered, no evidence relating thereto was directly offered and they do not appear to require specific comment.

Before the Public Utilities Commission was established, contracts between the water company and the Mystic fire district and the borough of Stonington were made in 1908 for fire service for twenty years with fire hydrant rentals at $30 and $25 per year which prevailed until the rate of $45 per year was applied in 1925 pursuant to the Commission's order in Docket No. 4439.

The following table shows the present and the company's proposed public fire protection charge in each district:

	Present Hydrant Rate	Proposed Inch-foot Charge	
Mystic Fire District	$4,410	$7,280	65%
Stonington Fire District	315	560	5%
Borough of Stonington	2,115	3,360	30%
Total	$6,840	$11,200	100%

The allocations of the proposed rates were made by the company's engineer to represent 16 per cent of the plant construction cost, and were established on the inch-foot basis, being allocated to the several districts on this same basis.

[11] The recommendations in the American Water Works Manual for a hydrant delivery capacity of 600 gallons per minute, a loss of not more than 2½ pounds pressure in the hydrant, and a total loss of not more than 5 pounds between the street main and outlet, and specifications of 6-inch pipe as the minimum size to which a hydrant should be attached are all well-known requirements and should be attained where practicable, but if all these are not attainable, then obviously the nearest reasonable approach to such conditions must be accepted to afford the best degree of fire protection available without undue expense, and even though such attainment does not fully meet the requirements and is not perfect, it serves for fire protection and is worthy of fair compensation, so that even with the knowledge for instance that about half of the hydrants show a flow of less than 600 gallons per minute it cannot be said that the fire protection service available from them is not worth a fair charge.

The American Water Works Manual further indicates that the average proportion of waterworks involved in fire protection service generally constitutes 60 per cent to 80 per cent of the cost of physical properties in communities of less than 10,000 population, and lower percentages for larger communities, with the cost of fire protection service at between 25 per cent and 35 per cent of total revenue with the higher percentage applying to the smaller communities.

The size of the communities served by this water company would place it in this latter class.

The Mystic fire district raised serious objections to the increase in the charge for fire protection service, and the borough of Stonington also raised objections to the proposed increase in its fire protection charges.

[12] The representatives of the two communities also drew comparison between the hydrant rates as proposed and those charged by some other water companies within Connecticut. The Commission has available in its files all these rates as well as those for fire protection service established on different methods. Such comparisons are interesting but are not significant as to whether any rate is too high or too low. These fire service charges vary widely since the charge must in each case be determined on the basis of the amount of revenue estimated to be required from fire protection service and upon the estimated amount of plant to be properly allocated to this class of service.

The Commission's engineers have computed the charges for fire protection service by the method outlined by Hon. Robert Nixon member of the Wisconsin Public Service Commission in the Journal of the American Water Works Association for December,

1937. This in many respects has merit, it indicates that the determination requires the exercise of judgment and that definite lines cannot be drawn. Its use required a special study of the company's plant and its operation followed by a detailed allocation of costs.

It is interesting to note that the result attained by this method showing 30 per cent of operating revenue as the fair proportion to be allocated to fire protection is between the limits of 25 per cent and 35 per cent prescribed by the general rule in the American Water Works Manual hereinbefore referred to, which latter has been in general use for a long time and has the sanction of the technical experts skilled in waterworks practice.

While it should be the aim of Commissions and water companies to allocate an adequate proportion of operating revenues to the charges for fire protection service and thus bring the rates for other classes of service to more reasonable amounts, there are not a few instances where the opposite course has been chosen and in this case the allocation of 30 per cent of all revenues to the charges for fire protection service is in marked contrast with 14 per cent allocated by the company. The present revenue from this source would have been approximately 9 per cent of the total estimated operating revenues, and is about 10 per cent of the total actual revenues, and obviously results in an overburden on the rates for other classes of service and this is true in the present case. It is likely that the company and the communities it serves are better satisfied generally with the allocation of earnings to the several classes of service substantially as now established than they would be under an allocation more scientifically determined which, as noted above, would provide 30 per cent of the revenues to be obtained from fire protection. The latter would require a substantial increase in these charges, and the offsetting reduction for a customer in any one of the other classes of service would be relatively small, even though the aggregate for such class might be substantial.

The Commission therefore has fixed the amount to be obtained from fire protection service substantially the same as by the company, though it is approximately half of what it would be if 30 per cent of the revenues were to be produced therefrom, and it appears that such increase is fair, since it is substantially an offset to the increase of taxes made by the town of Stonington, and avoids any material increase in the charge for other classes of service, especially for the industrial class.

[13] Fire protection charges except possibly in special cases should be computed on the inch foot basis, with an added nominal charge per hydrant to serve as direct compensation for rental, inspection, and maintenance. This is the generally accepted practice and has the merit of encouraging the improvement of fire protection service by the installation of additional hydrants which may be done with little increase in the annual expense. This method has been adopted by the Commission's engineers in determining the fire protection charge as hereinafter set forth. In computing the portion of plant to be allocated to fire protection service, the Commission's engineers included only one-fifth of the cost of filtration plant as the amount

required for this purpose, the remaining four-fifths being considered by them as required for other classes of service; this one-fifth portion is less than the one-fourth as apparently allocated by the company in its computations.

It seems desirable here to direct the company to give each community or district concerned information in advance of the installation of pipe which will affect its fire service charge, so that arrangements may be made to meet the expense in the budget of the district for its next ensuing fiscal year, and also from time to time, when conditions warrant, to make a recomputation of all fire service charges and the inch foot rate to the end that the latter may be changed in event it is found to produce a disproportionate percentage of the company's total revenue.

Dividends

[14] Though the dividends paid by a public utility have no bearing upon the determination of fair value or rate of return, it is of interest to note that the company paid two stock dividends out of surplus, one of $6,500 in 1899 and the other $25,000 in 1909 (both prior to the establishment of this Commission), and while no dividends were paid in 1930, 1932, 1933, or 1936, a dividend of 3½ per cent was paid in 1931, 18 per cent in 1934, and 9 per cent in 1935, so that the average yearly dividend rate on the capital stock has been about 4.3 per cent during the seven years from 1930 to 1936, inclusive.

Ownership and Outstanding Obligations

All the stock and outstanding bonds and notes of the Mystic Valley Water Company are owned by the Northeastern Water and Electric Corporation, a holding company owning forty-eight water and electric companies of which twenty-six are in the New England States. The holding company also owns the Northeastern Water and Electric Service Corporation with offices at Millbury, Mass., which was stated to be a nonprofit company for managing the operating properties owned by the holding company.

Upon the Commission's request, the company, on August 1, 1936, submitted a statement indicating by date and amount of each note, the history of all its borrowings from October, 1927, through December 31, 1935. At the close of 1928 the company reported no notes receivable and advances from affiliated companies were $103,000. For 1929 notes receivable were indicated in amount $106,120 and advances were $229,120. Notes receivable were increased in 1930 to $109,620 and advances increased to $235,873. In 1931 the loan from the company was canceled as a partial offset against the advances from affiliated companies. The reason for the loan made by the operating company has not been disclosed and it is difficult to understand why the operating company should make any such loan except it were compelled to do so by the holding company for the latter's advantage. However, this occurred prior to the acquisition of control by the present holding company and so far as the Commission can determine no harm was done thereby to the operating company and the matter appears to require no further consideration. As of August 15, 1934, the then outstanding notes were con-

solidated into one note of $145,250 bearing interest at 7 per cent and subsequent advances made for the installation of the filtration plant and for meters during the year 1935 were consolidated into one note dated November 30, 1935, in amount $64,000, bearing interest at 6 per cent, the total outstanding at the time of hearing being $209,250.

Questions were raised as to these notes now payable by the Mystic Valley Water Company to the Northeastern Water and Electric Corporation stated to represent the funds borrowed from time to time from the latter corporation and its predecessor holding company, including Northeastern Public Service Company, Eastern States Public Service Company, Atlantic Public Utilities, Inc., and Atlantic Public Service Associates, Inc., and question was also raised as to how and for what purpose these funds were used and the rates of interest thereon.

The Northeastern Public Service Company went into receivership January 2, 1933, in the Federal court in the state of Delaware.

[15, 16] Several questions were raised both by the Mystic fire district and the American Velvet Company as to the amount paid for the purchase of the company in 1934 by the Northeastern Water and Electric Corporation, which emerged from the receivership as the owner of the Mystic Valley Water Company and the several other operating companies by purchase from the predecessor holding company, the Northeastern Public Service Company, and other stockholders and noteholders, and questions were raised based upon the record of this receivership in the court of chancery of Delaware with respect to the Northeastern Public Service Company. These proceedings and the resulting purchase however, can have no bearing in the determination of fair value of the property of the Mystic Valley Water Company for rate-making purposes or fair return thereon, and should the Commission give any weight whatever to the price paid for the property in such a reorganization proceeding it would not be in accord with regulatory procedure as determined by the courts, and the Commission's finding on such a basis might be found improper in event of appeal.

While some of such information might be pertinent in the consideration of an application to the Commission for the issuance of securities by the company, the financial obligations of an operating company to its parent holding company or to others are of no moment in the determination of fair value or the fair return thereon, and as the Commission finds that these notes in no way bear upon the fair value of the company's property as it should be determined for rate-making purposes nor upon the rate of return on such value, they will not be further considered.

Financial History

The financial history of the water company as considered by the Commission necessarily is not the multitudinous transactions of borrowing from holding companies, but solely the financial history of the capital structure of the operating company's plant and equipment as indicated in the annual and other reports made to the Commission.

Use of Borrowed Funds

It appears that the moneys borrowed by the company since 1934 were for additions, as well as for improvements, in the plant and equipment made in pursuance of the Commission's orders in Docket No. 6093.

Expenditures for Management

The so-called management fee which for the twelve months ending August 31, 1937, amounted to $5,330, included in local and general office expenses, is paid to the Northeastern Water and Electric Service Corporation and was stated to be for general management, engineering studies and services, general bookkeeping, preparation and studies of tax returns, and for writing insurance.

This fee was stated to comprise two parts, one for the service company's expenses directly chargeable to the Mystic Valley Water Company and the other for the Mystic company's proportion of the remaining unallocable expenses determined by the ratio of its gross revenue to the gross revenues of all companies supervised by the service company, but no details with respect to this fee or evidence in support of the services it purported to cover were offered, and it is probable that the amount of the charge bears no relation to the value of the management service to the Mystic company or the actual cost thereof, especially since the specific charges are first established where definite allocations can be made and addition of the remaining prorated expense is quite likely to result in injustice to this supervised company.

The total amount paid for the salary of the full time local superintendent or resident manager and the full time wages of five employees attached to the local office in Mystic is small when considered in comparison with the amount of the management fee paid to the service company for nonresident and part time service, which indicates that the fee is larger than it should be.

The local supervisory expenses are allocated to several accounts and though the total amount for general and miscellaneous expenses has not been excessively large it appears that it may well be reduced and that the company should give consideration to a more equitable assignment of the total amounts so paid for the nonresident and local management to the end that the fee may be smaller and the local management more adequately compensated.

Operating Revenues and Expenses

The following table is a statement of the company's operating revenues and expenses for each calendar year 1932 to 1936, inclusive, and for the 12-month period ending August 31, 1937. [Table omitted.]

Operating Expenses

[17] If the company were not owned by a holding company it would be locally managed, there would be no nonresident supervision expense, and in the opinion of the Commission some reduction in the general and miscellaneous expenses could be made, not only without a reduction of salaries and wages now paid but with some increase therein.

It is difficult to conceive that a relatively small property of this kind which presents no special problems of operation or management requires

much if any unusual services that could not be rendered by the present competent local management, and it is certain that all the work of billing and accounting now performed at Millbury, Massachusetts, could be performed in Mystic with the addition of one or possibly two clerks. If there is an advantage in retaining the nonresident supervision to the extent it is now maintained such advantage must accrue largely to the holding company and the latter then should bear the major portion of the expenses therefor. The ratepayers should not be charged any more than a reasonable amount for general and miscellaneous expenses and in the opinion of the Commission the sum hereinafter allowed is adequate for the cost of local supervision and to provide for such legal, engineering, and other technical expenses as may occasionally be required.

While the operating revenue for 1935 which included about seven months' operation under the present rates established in 1935 was above that for 1934, there was a sharp decrease in 1936 and the company indicated that the rate of return on fixed capital plus materials and supplies and working capital has decreased, not only because the amount of fixed capital has been increased by the 1935 additions to the plant, but especially because local taxes have been substantially increased. It is well to note in this connection that the only substantial increase in the company's investment in plant was for the filtration plant located in the town of Stonington.

The company's estimate of operating expenses for 1938 is about $3,300 more than they were in 1936, due in part to the estimated expense of this rate case, $2,500, which latter appears to be reasonable, said amount to be amortized at $500 per year.

State and Federal Taxes

For the years 1935 and 1936 the state taxes were substantially the same, about $1,100; while the Federal taxes were $1,364 in 1935 and $199 in 1936.

Local Taxes

The following table shows a comparison of local taxes assessed against the company:

	1935		1936	
Town of Stonington		$2,300.00		$6,517.50
Borough of Stonington		43.20		69.20
Mystic fire district		300.92		301.42
Borough of Groton:				
(Town)	$663.96		$747.53	
(5th school district)	60.48		69.65	
(10th school district)	10.00	734.44	10.00	827.18
Total local taxes		$3,378.56		$7,715.30

It should be noted that the above taxes as assessed are slightly different than the amounts paid as shown in the company's annual reports, the latter being computed on an accrual basis, but for purposes of comparison of the amount of taxes these figures are satisfactory.

[18] It is not unusual, following a rate increase, for the community served by a utility to raise the utility's local taxes. Such an increase may be fully justified, but those responsible for bringing about the increase must know that taxes are a part of the utility's expenses and that this determination by Commissions has been confirmed by the courts; and as taxes are deductible before the determination of

operating income it follows, therefore, that if any tax increase is of undue amount there may necessarily result a justification for an increase in rates to offset the expenditure thus caused; in other words, in the payment of local taxes a utility is in effect serving the community as an agency in the collection of taxes from the utility's customers since these with other taxes are not passed on to a utility company's owners. The assessment of local taxes against a utility, therefore, should be carefully considered by local authorities.

The trial schedule of rates now in effect established by order of the Commission in 1935 was calculated to yield $35,400 operating income, but in 1936 the operating income was only $25,600, a deficiency of $9,800, due in part to reduced revenue from industrial consumers, but substantially $4,300 was due to the increase in local taxes in the town of Stonington, where as hereinbefore mentioned the company constructed its filtration plant in 1935 at a cost of about $60,000.

In this connection it should be noted that an increase in local taxes assessed against a utility which results in such a substantial increase in the utility's expenses as to warrant an increase in rates can most fairly be offset by an increase in the charge for fire protection service in the community served, and this feature is hereinafter so treated.

Estimated Expenses and Commission's Allowance

The following table shows the yearly expenses allowed by the Commission in comparison with the company's estimated expenses. [Table omitted.]

Book Value

A statement of the company's fixed capital or plant and investment accounts was offered in evidence, prepared from the books of the company from 1889 to 1936 by the company's auditor, and was stated by him to represent the historical cost of the property, the total amount being $668,872 as of December 31, 1936, which is the same as indicated in the company's latest annual report to the Commission. The substantial increase in fixed capital account in 1928 and 1929 as hereinbefore mentioned were for raising the Palmer pond dam and for installation of additions to the distribution system, chiefly the pipe crossing under the Mystic river which has not been in service since 1931, as already stated in the discussion of property not used or useful.

There was also offered in evidence a statement of the company's additions to fixed capital from January 1, 1926, to December 31, 1936.

The company was requested to submit supplemental detailed data to substantiate this statement of additions, but did so only with respect to certain items in the years 1926 to 1936, inclusive. Since the totals of such details in this supporting data as to every year amount to less than the amounts shown in the general statement, it is not possible to determine the accuracy of the latter. In some instances the additions appear of undue amount when considered in conjunction with the extent and character of improvements as indicated in the Annual Report to the Commission for the corresponding year, and while it is impossible for the Commission to reach a

definite conclusion as to the amount or extent of such discrepancy or excess expenditure, this should and will be considered by the Commission in the use of the original cost as represented by the amount of fixed capital, as an index in determining fair value.

The cost of this plant in consideration of the customers served has of necessity been relatively large on account of the scattered and wide area served and the considerable amount of rock excavation.

[19] A comparison of the amount of fixed capital of different companies serving substantialy the same population cannot be justified. The companies which were suggested for such comparison were Ansonia, Rockville, Plainville, Torrington, Naugatuck, all of which are gravity systems serving generally compact areas with reservoirs fairly close to the center of distribution, while the Mystic Valley Water Company serves two different communities about 4 miles apart with a separate transmission main for each of these distribution systems, and further the water at Mystic is filtered and pumped. Any comparison of the operating revenues and expenses of companies differing to such an extent in their physical characteristics cannot reasonably bring a conclusion that their rates and charges should be similar or even comparable.

The computation in the American Velvet Company's brief, claimed to show "actual historical cost" in amount $211,342, cannot be considered as reasonable, since the basis for determining it has no foundation in regulatory procedure, as hereinbefore indirectly referred to, and the Commission in this as in all other cases must follow that laid down by the courts.

Depreciation Reserve

The company first passed from local control to the Atlantic Public Utilities, Inc., a holding company, on April 21, 1927, by acquisition of a majority of the stock.

From 1912 when the company began to make reports to the Commission up to 1919, there was no provision at all for depreciation; and from 1919 to 1927 the depreciation reserve increased to 9.3 per cent of the fixed capital and since then has consistently maintained less than this ratio. The annual accruals from 1924 to 1936 inclusive have never been large, and the amount was less than 1 per cent of the fixed capital in every year with the exception of the years 1927 and 1935.

From 1924 to 1936 inclusive the total accruals credited were $53,808 and the charges against the depreciation reserve were $27,505 so that the net increase in this period was only $26,303.

As of December 31, 1936, the depreciation reserve amounted to $50,930 which is approximately 8 per cent of the fixed capital and the company admitted that the amount is inadequate and estimated it should be 15 per cent or more.

[20] In the company's estimate of operating expenses the item for depreciation reserve accrual was set at $6,698 per year, being calculated on the basis of 12½ per cent of operating revenues, less the amount of expenditures for maintenance, and on account of charges for property retired the net

increase would be about $4,500 per year.

Any such arbitrary method for determining the annual accrual for depreciation reserve is unscientific and without merit. In the opinion of the Commission's engineers the annual accrual for this property should be about $5,300 and this would be ample for a plant of this type if adequate accruals had been made over the life of the property.

The company estimated that the amount in the depreciation reserve should be about 15 per cent of the fixed capital.

The amount now in the depreciation reserve is very small as compared with the estimate of accrued depreciation made by the company's engineer, representing 23 per cent for the entire property, and with that of the Commission's engineers representing 28 per cent, and though it is not to be expected that the percentage ratio of depreciation reserve to fixed capital will be the same as the percentage of accrued depreciation in the property, it is impossible to justify the condition which here prevails that the former ratio is so much smaller than the percentage of accrued depreciation on either estimate and this is further indication that the depreciation reserve is now inadequate in amount and that it should be increased.

[21] Based upon the company's estimate of yearly charges to the depreciation reserve, an accrual of $5,300 per year as allowed by the Commission would result in a net increase of only about $3,100 per year. It is obvious that the depreciation reserve cannot be built up to an adequate amount by such an accrual of reasonable amount, but it would be unfair now to make the ratepayers of the present pay for past deficiencies.

The holding company which acquired control of this property in 1927 and those which acquired it since then must have been fully aware of the inadequacy of the depreciation reserve, and the purchase price paid must have been determined in full contemplation of this inadequacy, even though the new owners failed to acknowledge this by making an increase in this accrual or transfer of other available funds to the depreciation reserve. This account will require further enlargement to provide for retirement of not used and useful property, hereinbefore specifically referred to, which should have been accomplished at the time when the use of each unit of property ceased.

Such enlargement of the depreciation reserve without penalizing the present ratepayers can only be accomplished by transfer to this account from time to time of sufficient funds from profit and loss account and until this has been brought about the latter account should be conserved for this purpose. It may well be that the present owners of the property are not altogether responsible for the deficiency of the depreciation reserve but they are fully aware of it by their admissions in this case and should have proceeded to correct this condition from the time when they acquired the property.

Reproduction Cost Estimate

An estimate of reproduction cost less accrued depreciation, while not representing fair value, is an important element for consideration in a determination of fair value, especially

if it is honestly and conservatively made, avoiding excessive allowances for intangibles.

The company through its engineer, C. M. Blair, presented an inventory of the property, plant, and equipment and an estimate of cost to reproduce, based on prices as of October 16, 1937, together with his estimate of accrued depreciation of the plant and equipment as of the same date, as follows:

	Cost to Reproduce New	Less Depreciation
Total physical construction	$780,689	$600,685
Miscellaneous costs of construction	117,103	90,103
Total cost of physical property	$897,792	$690,788
Organization expense	8,978	8,978
Working capital (materials and supplies in general equipment account)	7,000	7,000
Going cost	45,000	45,000
Total	$958,770	$751,766

In this reproduction cost estimate the company's engineer considered rock excavation to be about one-third of the total amount involved in pipe laying.

His allowance for accrued depreciation for the entire property as hereinbefore noted amounted to substantially 23 per cent, being based on the age and estimated service life of the various units of property and considering also their observed condition so far as practicable.

These estimates of accrued depreciation made by the company's engineer, though they vary to some extent from those of the Commission's engineers, appear to be reasonable.

The allowance of 15 per cent overhead by the company's engineer for engineering, superintendence, administration and legal expense, taxes and interest during construction, and contingencies and omissions appears to be reasonable.

The amounts at which the not used and useful property are stated in the company's reproduction appraisal are as follows:

	Cost to Reproduce New	Less Depreciation
Total physical construction of upper river crossing	$11,047	$8,285
Engineer's house and garage	6,000	6,000
Miscellaneous cost of construction and organization expense	2,753	2,339
Total	$19,800	$16,624

These amounts are hereinafter deducted from the company's appraisal.

The company offered no evidence in support of its claim of $45,000 for going concern value in its reproduction cost appraisal.

Commission Engineers' Reproduction Cost Appraisal

The engineers of the Commission's staff made an analysis of the estimate of reproduction cost of the Mystic Valley Water Company as submitted by the company's engineer and from a study of the latter's report, their investigation of the cost to reproduce the items included in his inventory of the company's property and from their inspection of the company's property and observation of accrued depreciation they prepared an estimate as follows; to the items in the inventory submitted by the company the Commission's engineers applied their estimated unit costs, omitting the items of not used and useful property hereinbefore referred to. They applied

their estimate of percentages for costs of miscellaneous construction, organization expenses, and for working capital, but excluding allowance for going concern value.

The allowance of overhead as set up by the Commission's engineers amounts to 18.5 per cent, including contingencies and omissions, and while it appears large in comparison with that of the company's engineer, this is not actually so, since the former is inclusive of all overheads and it cannot be directly compared to the company's 15 per cent which is not all inclusive, since the company's engineer included in each item of construction an allowance for contingencies.

Their estimate of accrued depreciation was calculated by the straight-line method determined from the estimated life of each item of property and its age, and in addition from observation of certain items of property which were available and ascertainable. Their appraisal is as follows:

Commission Engineers' Appraisal

	Cost to Reproduce	
	New	Less Depreciation
Total physical construction	$698,300	$498,377
Miscellaneous costs of construction	129,186	92,200
Total cost of physical property	$827,486	$590,577
Organization expense	8,275	8,275
Working capital (materials and supplies in general equipment account)	7,000	7,000
Total	$842,761	$605,852

Overstatement of Fixed Capital

As hereinbefore noted, the three items of not used and useful property and the old Palmer dam are carried in the fixed capital account, and while it is impossible for the Commission to determine with absolute exactness the amount by which the fixed capital account may thus be overstated, especially for use as an index of the fair value of the company's property used and useful in the public service, the evidence indicates that the original cost of the not used river crossing was $11,197 and the Starr lot $1,892, so it is certain that the overstatement as to these two items is $13,000 and with no more than a reasonable additional allowance for the other two items, the old Palmer dam which was removed, and the not used 8-inch pipe line to the railroad company's reservoir, it appears that the fixed capital is probably overstated by not less than $40,000.

As of June 30, 1912, the fixed capital was $325,533. From 1912 to 1936, inclusive, the additions to fixed capital amounted to $377,523, and the deductions from this account for property retired were only $34,183 which seems a relatively small amount, and there is therefore a possibility that the fixed capital account is to some extent further overstated. This must have been apparent to the several holding companies which acquired the property beginning in 1927, and their purchase price must have been determined in contemplation of this feature as well as of the inadequacy of the retirement reserve as hereinbefore noted, and with the knowledge that sooner or later a proper adjustment and restatement of the company's balance sheet might be required.

The Commission recommends that the company review its books of account to the end that they may be restated to properly reflect the true amount of the fixed capital account by

eliminating therefrom the original cost of all items of not used and useful property as well as of the old Palmer dam in so far as it was removed, and any other retirements which such review discloses should be made; any such restatement however, may not be made without specific prior approval by the Commission of each of the proposed journal entries intended to accomplish the change. In event the company considers it likely that any not used and useful property may again come into useful service such items should be carried in a separate account.

Fixed Capital

The following figures are taken from the company's report to the Commission as of December 31, 1936:

Fixed capital	$668,873
Working capital, materials, and supplies	16,324
Total	$685,197
Depreciation reserve	$50,930

Company's Appraisal with Commission's Modifications

Deducting the property not used or useful in the public service as hereinbefore mentioned and also deducting going concern value, the following is a restatement of the company's estimate of cost to reproduce new and less accrued depreciation:

	New	New Less Depreciation
Cost to reproduce including organization expense and working capital	$958,770	$751,766
Property not used or useful and going concern value	64,800	61,624
Modified valuation	$893,970	$690,142

Indices of Fair Value

The Commission has for consideration the following three indices of fair value:

1. Fixed Capital

	Fixed Capital	Depreciation Reserve
Fixed capital as reported	$668,873	
Working capital, and materials and supplies	16,324	
Total	$685,197	$50,930

2. Company Cost to Reproduce New—Estimated

	Cost New	Accrued Depreciation	Cost New Less Accrued Depreciation
Total property, including materials and supplies, less nonused property	$886,970	$203,828	$683,142
Working capital	7,000		7,000
Total	$893,970	$203,828	$690,142

3. Commission Engineers' Cost to Reproduce New—Estimated

	Cost New	Accrued Depreciation	Cost New Less Accrued Depreciation
Total property including materials and supplies, less nonused property	$835,761	$236,909	$598,852
Working capital	7,000		7,000
Total	$842,761	$236,909	$605,852

Taking into consideration all three indices relating to value, the evidence in the case and other data in the Commission's files relating to the company's property and in the preceding dockets hereinbefore referred to, and the probable overstatement of fixed capital, the Commission is of the opinion and finds the present fair value of the property of the company used and useful in the public service to be $630,000.

The Commission has excluded from this amount any separate allowance for going concern value because it ap-

pears that the two last indices of value include adequate allowances for miscellaneous costs of construction, and for the further reason that there is an entire lack of evidence in support of a separate allowance for the item.

While the company's engineer estimated the fair value of the property to be $751,766 including an allowance for going concern value, and $700,000 without going concern value, he admitted that he had not reviewed the company's books; so it seems probable that this estimate was based principally upon his reproduction cost estimate and without knowledge of the overstatement of fixed capital account as hereinbefore developed.

Operating Income and Fair Return

[22] It is not reasonable, especially in the face of declining operating income, to determine from the average of the operating income over a period of years any estimate of what the minimum amount should be.

The return of 5.2 per cent requested by the company cannot be taken by the Commission as an indication that its finding would not be subject to appeal by the company if this rate of return were considered as a fair measure of return to be applied to any rate base. In fact it is clear, on the contrary, that the company merely indicated its belief that $35,244 would be acceptable to it under the present circumstances and that this amount was in effect only 5.2 per cent return on the amount of fixed capital plus a sum representing materials and supplies and working capital.

[23] The Commission in fixing the rate of return must consider the rate established upon funds invested in properties devoted to water supply, and the Commission, therefore, in this case establishes 6 per cent as a fair rate of return upon $630,000, the fair value of the company's property, namely a return of $37,800.

The Commission believes however, that under all the circumstances the company should at present receive not more than the return it requested namely, $35,250, and while this amount is less than $37,800, the fair return established above, it represents 5.6 per cent return on the fair value hereinbefore determined. The difference between this amount and the fair return as found is not substantial and it cannot be considered confiscatory, especially as the company indicated its willingness to accept this return, and the amount should be adequate operating income to permit the company to continue to render proper service to its patrons, especially as there does not appear to be any immediate need for additional funds for extensions of its plant.

Operating Revenues Required

The amount of required operating revenues is $75,000, this being determined by adding together $39,750, the amount hereinbefore allowed for operating expenses and estimated to be required by the company for the rendition of adequate service to its customers, and $35,250, the operating income hereinbefore allowed as the return upon the value of the company's property used and useful in the public service.

An increase of $9,550 in the company's rates is required to produce $75,000 operating revenue, and the schedule of rates hereinafter pre-

scribed is estimated on the basis of the 1936 consumption data to yield this required amount.

Rates Established by the Commission

The rates for all metered service as established by the Commission provide for a quarterly minimum charge including 300 cubic feet of water the same as proposed by the company. For a domestic consumer the minimum charge of $13.80 per year cannot be considered excessive for safe and potable water, even if the quantity is limited to 300 cubic feet of water quarterly, equivalent to about 25 gallons per day, which is fairly representative of volume used by a small household.

This same quarterly minimum charge including 300 cubic feet of water is applied to consumers in the domestic and commercial class and also in the industrial class. Both classes have the same rates in the lower blocks so that they have the same charges for equivalent volumes of water consumed. For the industrial consumers the rates are less in the higher blocks than those proposed by the company which largely offsets the increase in the lower blocks for the larger consumers.

The major part of the increase will be applied to the charges for public and private fire protection service which are now producing a lower proportion of revenue than they should, and the Commission is of the opinion that even though this increase is substantial, this change is fully justified, since it is certain that the rates as now established will produce a less proportion of revenue than might properly come from this class of service.

The rates must not be unreasonable, such as to deny the service of a utility company to its customers, but in this instance the rates as hereinafter determined cannot be so considered, nor can it reasonably be found that these rates for any class of service are more than the service is reasonably worth.

The following table indicates by comparison the operating revenue from each class of service under the present rates, the company's proposed rates and those established by the Commission:

Operating Revenues

	Actual 1936 Present Rates	Estimate Co's Proposed Rates	Estimate Comm. Rates
Domestic and commercial	$41,128	$42,977	$42,800
Industrial	16,061	21,780	18,600
Public fire protection service:			
Mystic fire district	4,410	7,280	7,826
Stonington fire district	315	560	525
Borough of Stonington	2,115	3,360	2,962
Private fire protection service	1,302	2,310	2,177
Other	120	120	120
	$65,451	$78,387	$75,010

It seems fitting to refer again to the increase of about $4,300 in local taxes made subsequent to the rate increase ordered in 1935, since if this additional expense had not been imposed upon the company it is quite likely that the present increase in rates herein provided would not have been so large and possibly might have been avoided altogether.

Schedule of Rates

Based upon the foregoing and upon all the facts presented in this case, the Commission is of the opinion and finds that the following schedule of

rates should be and is hereby prescribed as reasonable maximum rates and charges for all patrons and all classes of service by the Mystic Valley Water Company: [Schedule omitted.]

MISSOURI PUBLIC SERVICE COMMISSION

Jackson County

v.

Independence Waterworks Company

[Case No. 9466.]

Service, § 54 — Powers of Commission — Extensions — Rules and regulations.

1. The Commission can require a water utility to extend its mains only in conformity with the rules and regulations in effect at the particular time, p. 50.

Rates, § 124 — Revenue from extension — Water utility.

2. The fact that in twenty years a water utility will receive $90,000 in gross revenue upon an extension that cost slightly in excess of $30,000 is not controlling in the matter of fixing the rates that should be charged for the service rendered, p. 51.

Return, § 16 — Reasonableness — Factors considered.

3. A water utility should be permitted to charge rates that will allow it to earn a reasonable return on the fair value of the property after all the operating expenses have been paid and a proper reserve set aside for replacement or depreciation of the system, p. 51.

[January 27, 1938.]

COMPLAINT *against charges made by a water utility for service to county institution; complaint dismissed.*

By the COMMISSION: This case is before the Commission upon the complaint of Jackson county against the charges made by the Independence Waterworks Company for water service furnished to one of the county institutions known as the McCune Home for Boys. Jackson county is one of the legally organized counties and municipal subdivisions of this state. The Independence Waterworks Company is a corporation organized under the laws of the state of Missouri and is engaged, as a public utility, in furnishing water service to the city of Independence and its inhabitants, as well as the unincorporated area of Jackson county adjacent to the city of Independence. Included in the customers to whom it furnishes service are in-

stitutions of the county, including the Jackson County Farm and the McCune Home.

In response to the complaint against the charges for the water service furnished the McCune Home, the defendant, Independence Waterworks Company, replies that the main through which water service is furnished the McCune Home was constructed in conformity with a contract entered into between it and the county, and that the rates charged are in conformity with the understanding had in that agreement, and further, that the extension was made and the charges for the service are in conformity with the rates and charges, rules and regulations set out in its schedule filed with the Commission.

A hearing was held on December 22nd, at which time all interested parties were present and given an opportunity to be heard. The case was then submitted upon the record. The parties were given until January 1st to file briefs. Briefs have been received.

The evidence shows that on May 7, 1930, Jackson county, through its county court, entered into a contract with the Independence Waterworks Company for the extension of a 6-inch water main along Lexington road, a distance of about 5 miles, to the McCune Home for Boys. The line was connected to the terminus of a 6-inch main located on or near Frederick avenue just east of the city limits of Independence, and thence extended in a northeastwardly direction to the McCune Home. It was agreed that the county should take the water and pay therefor a minimum bill of $2,500 a year, if the amount taken with the meter rates applying thereto did not amount to that much. It was then estimated by the defendant that it would secure from prospective users of the service along the pipe line to be laid sufficient sales to produce an additional annual revenue of $2,000. The defendant estimated it should receive a revenue of at least $4,500 a year in order to justify the expenditure required to furnish the service. It was estimated by the defendant that the cost of the 6-mile extension would be $40,000.

The evidence shows that the pipe line was constructed between June and September of 1930 at a cost of $30,271 plus a few cents. In view of the lower actual cost, the county takes the position that the guaranteed monthly minimum to be paid by it should be correspondingly lower. The county argues that if the defendant is paid for a period of twenty years the amount provided for in the contract, the defendant will have received $90,000 on an extension that cost something like $30,000, and after taking out the cost of the water and delivering it there will still remain a large profit to the defendant. The County's Exhibit No. 2, prepared for it by the defendant, shows the total sales made each year by the defendant to customers along the pipe line in question, including the sales to the McCune Home. An examination of that exhibit shows that the sales to the individual customers along the pipe line have not yet reached the estimated amount of $2,000. Service was begun in September of 1930. The annual revenues received since then have amounted from $1,171 to $1,943.31. The last figure was reached in 1936. That for 1937 amounted to $1,600.92.

The total revenue received from those customers since the beginning of service amounted to $11,169.42. The total amount received from the county amounted to $18,021.35. The total receipts from all sources amounted to $29,190.83. The revenues received from the county by applying the schedule of rates to the actual amount of water taken by the county amounted to $8,576.21. Because of the guaranty required under the contract, the county was required to pay an additional amount above that of $9,445.20. When the receipts from the customers along the line amount to more than $2,000 annually, the amount received above $2,000 will be deducted from the guaranteed minimum of the county, permitting the county to pay a lesser minimum by that amount or by an amount up to the difference. If the bill found by applying the regular schedule of rates to the water taken by the county at any time amounts to more than the guaranteed minimum, the water above that amount will be charged for at the regular schedule of rates filed by the defendant. The $2,500 annual guaranty is to be paid in amounts equal to one-twelfth of that figure, or slightly over $208 per month.

Defendant contends that it is not earning an excessive return on the fair value of its property. It shows that fact in an exhibit prepared by it for the county filed as Exhibit 3 in this case. That exhibit shows it earned 3.8 per cent on a value of $1,155,108. It should be stated that this Commission made an investigation of the business of the defendant, that included the finding of the fair value of the property and the reasonableness of the return made on that value. The report of the Commission's finding was made as of March 25, 1935. The fair value of the property at that time was fixed at $1,050,000. The Commission further stated that "the company is not earning more than a fair return on its property." The total revenues received at that time, for the year ended June 30, 1934, amounted to $189,598.49. Out of this the defendant had available for depreciation and return $69,942.46. For the year ended December 31, 1936, it claims it had available for depreciation and return $58,731.13. It further contends that the figures submitted in the exhibits prepared by it for this case are prepared in conformity with the classification of accounts prescribed by this Commission.

[1] It should also be added at this time that the Commission made an investigation of the practices of the defendant in extending its mains to new or prospective customers. That matter appears in Case No. 7483 (1 P.U.R.(N.S.) 173). By the order issued therein April 19, 1933, the defendant was required to file new rules and regulations governing extensions of its mains to new customers. The defendant was required to lay an average of 100 feet of main per customer to be connected and state the basis on which it would extend mains if the extension to a customer or customers amounted to more than 100 feet per customer. In response to that the defendant filed its extension rule, providing that, if the length of the main required is greater than 100 feet per customer, the defendant will spend towards the cost of the laying of the main six times the estimated annual

revenue to be received from the new business to be connected. That rule continues to be in effect. In view of the decision of the supreme court in State ex rel. St. Louis County Gas Co. v. Public Service Commission (1926) 315 Mo. 312, P.U.R.1927A, 187, 286 S. W. 84, the Commission can only require the defendant to extend its mains in conformity with the rules that are in effect at the particular time. Should conditions warrant an investigation of the rule, that can be made and the rule modified as the evidence may require. The defendant's extension rule has not been attacked in this proceeding, so it is the view of the Commission that the reasonableness of the charges made by the defendant for service furnished the county in this case can be determined by the application of the defendant's rule. It is shown that the extension cost $30,271. One-sixth of that amount is $5,045. So if the extension rule is to govern, the defendant should receive from the McCune Home extension an entire annual revenue of $5,045 instead of the $4,500 that is guaranteed under the contract.

It is not to be understood that the Commission indicates the charges should be raised because the extension rule is to apply generally to all conditions. It may be that by a further examination of the extension rule it should be modified when applied to unusual extensions, such as was made to serve the McCune Home. The willingness of the defendant to accept an annual guaranty payment of less than one-sixth of the estimated cost indicates that it takes a similar view of the matter.

[2, 3] The position the county takes in stating that in twenty years the defendant will receive $90,000 in gross revenue upon an extension that cost slightly in excess of $30,000 is not controlling in the matter of fixing the rates that should be charged for the service rendered. The rates the defendant should be permitted to charge should be those rates that will allow the defendant to earn a reasonable return on the fair value of the property after all the operating expenses have been paid and a proper reserve set aside for replacement or depreciation of the system.

If the defendant receives only a reasonable return on the system it will receive nothing out of the operating revenues to pay back to it the $30,000 invested in the extension. The only way by which it can return that $30,000 to the treasury is through the depreciation reserve which will be available should the defendant, at any time in the future, cease the operation of its system. It may, by the issuance of bonds at a lower rate of interest than the return earned, impound the difference and return to the treasury, over a number of years, the cost of the line. That is a matter for the defendant to handle.

We believe from all the evidence that the terms and conditions under which the defendant is furnishing the service to the McCune Home and the charges made therefor are fair and reasonable, both to the county and the defendant, and that this cause should be dismissed without prejudice.

It is, therefore, after due consideration,

Ordered: 1. That this cause be and the same is hereby dismissed.

Ordered: 2. That this order be effective ten days from the date hereof, and that the secretary of the Commission serve certified copies of this report and order upon all parties interested herein.

CALIFORNIA RAILROAD COMMISSION

Re Rose Anna McDonald

[Decision No. 30472, Application No. 21415.]

Service, § 230 — Abandonment — Inadequate revenues — Uncollected bills.

1. Consumers in straitened financial circumstances must be recognized as actual sources of revenue, in a proceeding to determine whether authority should be granted to abandon a water service alleged to be operated at a loss, where consumers are few and total collectible revenues play a vital part in the ultimate findings, although the utility owner has generously served such customers without making serious attempts at collection, p. 53.

Service, § 230 — Abandonment — Inadequate revenues — Free service to utility owner.

2. It is improper to charge all operating costs, including depreciation, against paying consumers while making no credit or allowance in revenue or expense for water delivered to the utility owner, in a proceeding to determine whether abandonment of service should be authorized on account of operation at a loss, p. 54.

Service, § 230 — Abandonment — Inadequacy of revenues.

3. Authority to abandon water service should be denied where, disregarding revenues representing a fair charge for free water used by a utility owner and confining operations to other consumers only, the service does not produce an out-of-pocket loss but yields a substantial net return upon entire investment, p. 54.

Service, § 241 — Abandonment — Inadequate revenues — Rate increase as alternative.

4. A public utility owner, instead of abandoning service which does not produce a full net return to which the utility may be entitled by law, should apply for a rate increase, p. 54.

[January 3, 1938.]

APPLICATION *for authority to abandon water service; denied.*

APPEARANCES: Francis Carr, for applicant; E. E. Erich, for himself and other consumers.

WHITSELL, Commissioner: Rose Anna McDonald, owner and operator of a domestic water system in the un-

incorporated town of French Gulch, Shasta county, asks for authority to abandon and discontinue service. Applicant alleges that the consumers have other sources of water supply; that the system is being operated at a loss; and that the main distribution pipe line requires replacement, but that the revenues obtained from the service rendered do not warrant the installation of a new main.

A public hearing in this proceeding was held at French Gulch.

Heretofore, on the 18th day of June, 1936, Mrs. McDonald filed an application (Application No. 20616) asking for authority to discontinue service which was denied in Decision No. 29386, issued December 21, 1936. No substantial change has occurred in the community affecting this water system since the date of this decision to which reference is made for additional information and a more complete description and history of the waterworks and its operations.

The plant consists of 1¼ miles of ditch and approximately 1,700 feet of 4-inch, 3-inch, and 1½-inch pipe. Water is obtained by diversion from French Gulch creek. In years of normal rainfall there is sufficient water flowing in the stream to provide service during the entire year; however, there are years of subnormal rainfall during which the stream is unable to provide a water supply for the consumers to obtain water from shallow wells and an open ditch owned by Edward Laboudique, diverting from a point on Clear creek just above and at the outskirts of French Gulch. These sources, however, are subject to surface contamination. The canal is called the Town ditch and supplies water for irrigation purposes only. The ditch is not located at an elevation high enough to supply many of the users in French Gulch but applicant's premises is among the few so served. Originally the water supply from French Gulch creek was acquired by Bernard Gartland, father of applicant, for mining purposes on Mineral Lot No. 39, then known as the Gartland Placer Mine and later known as the Gartland Home Place. Mrs. McDonald now maintains her residence on the premises and rents another home on the same property. According to the testimony, Thomas McDonald, the deceased husband of applicant, about forty-five years ago installed a pipe line in the main street of French Gulch for the purpose of supplying the community with water for fire protection purposes and for sprinkling the roadway. Subsequently this line was extended 500 feet, more or less, to serve the schoolhouse. The various residents in the community were permitted to connect service pipes to the main and domestic service was furnished and charged for at rates varying from $10 to $30 per year, depending upon the size of the premises.

[1] The testimony shows that the actual collections from nine consumers in 1936 was $65 and the operating expenses $134, resulting in an annual loss of $69. However, it was admitted that some of the consumers had failed to pay for service and that no serious attempt has in the past or is now being made to collect from them. It was admitted by applicant that there were three other consumers in addition to the nine who were not billed for service as they were her personal

friends. While such generosity in providing water service without cost to certain consumers in straitened financial circumstances is highly commendable, yet from a legal standpoint, in a case where there are so few consumers and total collectible revenues play so vital a part in the ultimate findings, the Commission must recognize such users as actual sources of revenue. Had collections been made from all of the users served during 1936, the revenues would have amounted to at least $131, disregarding entirely the credit to revenues that properly should be chargeable to applicant for the water used for irrigation and sprinkling upon the several acres comprising the McDonald home and her adjoining property occupied by tenants.

[2–4] Under the present method of accounting followed by applicant, no revenues are credited to her service but all cost of operation, including depreciation, is charged against the consumers, resulting in free water service for the entire Gartland Home Place at the expense of all other and paying water users. Obviously this is improper. The record shows that the largest item of expense is that for the ditch tender which totals $120 per year. The premises of applicant consists of approximately 7 acres of garden, lawn, and orchard upon which are located two residences. No allowance in revenue or expense is made for the water delivered to either of these two residences which cover an acreage about equal to that of the lawns and gardens of all other users combined.

In giving proper consideration to the allocation of a reasonable portion of the operation expenses to the costs of supplying water to the McDonald holdings, the above basis of area and use indicate that one-half thereof should be so distributed. Disregarding revenues representing a fair charge for water used on applicant's premises and confining operations to the other consumers only, this service produces not an out-of-pocket loss, as alleged, but, on the contrary, yields a substantial net return upon the entire investment which is reported to be $1,500. Should this profit not amount to the full net return upon fixed capital to which the utility owner may be entitled by law, she has her legal remedy, as pointed out in our former decision (Decision No. 29386), to apply to this Commission for an increase in rates. Under this view of the case, it will be unnecessary to pass upon the extent of the dedication to the public use of the waters of French Gulch creek, especially in view of the fact that counsel for Mrs. McDonald freely concedes that the water served to the town consumers has been so dedicated for a period of at least forty-five continuous years last past.

Nothing has been presented in this proceeding that was not before the Commission in the former application for discontinuance which was decided only eight months prior to the filing of the instant case.

Referring to the allegations of applicant to the effect that all consumers have individual wells or are able to obtain water for domestic use from other sources and also that the French Gulch supply is no longer necessary for fire protection purposes, the evidence presented by each and every consumer testifying was to the effect that the consumers are all dependent upon

the McDonald system for water not only for irrigation purposes but for household uses as well and that the mains of applicant's system being under pressure provide the sole reliable source of protection against the ravages of fire. The only pumping apparatus owned by the fire district consists of a small locally constructed pumping outfit mounted on a 1920 model Dodge automobile which is used only to cover sections of the community not served by the mains of the McDonald system. It is clear from the past performance of this piece of home-made equipment that reliance for fire protection must be placed upon the facilities provided by applicant's pressure system.

Testimony concerning the present condition of the mains and pipe lines used for the distribution of water is somewhat contradictory. The pipe lines which have been in place for approximately forty-five years are claimed to be in need of immediate replacement by the owner; however, several witnesses testified that remaining life of these pipe lines should be between five and ten years and that the mains at present are capable of giving reasonably good service without extensive repairs.

Under the circumstances and according to the facts as set forth above, the evidence presented is insufficient to warrant the Commission in authorizing the discontinuance of further public utility service to the consumers on this system; however, as was suggested at the hearing, it appears certain that Mrs. McDonald can make arrangements to turn over the responsibility of operating this water system to the local fire district in the event she no longer cares to be burdened with its continued operation. Members of the board of directors of the fire district present indicated their willingness to enter into such an arrangement and agreed to deliver to the premises owned by Mrs. McDonald water free of charge in the quantities to which she is entitled as long as water is available in the ditch system. This latter proposal commends itself to this Commission as being a happy solution to the difficulties involving the service rendered to the community of French Gulch by applicant herein.

In conclusion it should be stated that Mrs. McDonald is most deserving of full credit for maintaining this water service throughout the many years of distressed and uncertain financial conditions which have so severely stricken this once populous and thriving, pioneer mining town, without, in a single instance, insisting upon full payment for water from those consumers unable to obtain work and pay their bills and also in so magnanimously refraining from pursuing her full legal rights and demanding long since the establishment of higher water rates.

The following form of order is submitted:

ORDER

Application having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted, and the Commission now being fully advised in the premises,

It is hereby *ordered* that the application herein be and it is hereby denied.

For all other purposes the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the state of California.

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

Carolina Power & Light Company

v.

South Carolina Public Service Authority et al.

South Carolina Power Company

v.

South Carolina Public Service Authority et al.

South Carolina Electric & Gas Company

v.

South Carolina Public Service Authority et al.

[Nos. 4252–4254.]

(94 F. (2d) 520.)

Parties, § 9 — Challenge of Federal administrator's act — Loans and grants for public plant — Rights of competitors.

1. Hydroelectric power companies have no standing to question the making of a loan and grant by the Federal Administrator of Public Works to a state power authority in aid of the construction of a hydroelectric project for the generation of electric current which will be sold in competition with the company, p. 59.

Parties, § 9 — Competitor of state power project — Right to challenge project construction.

2. Hydroelectric power companies which do not have franchises for the sale of electric current have no standing to question the legality of the construction on a river of a power project by a state authority for the generation of electric current, which will be sold in competition with the companies, since neither the sale of current nor the obstruction or diver-

sion of a stream by the project will infringe any right of the companies, p. 59.

Injunction, § 54 — Parties — Rights of competitor.

3. The mere fact of competition does not entitle one whose rights are not invaded to enjoin the unlawful acts of a competitor, p. 59.

Parties, § 7 — Enforcement of public rights — Obstruction of navigable stream.

4. Any unlawful obstruction of a navigable stream or a public highway is a matter for the public authorities, not a matter of which private individuals may complain, unless they suffer some direct and special injury to their rights not common to the public, p. 61.

Parties, § 7 — Enforcement of public rights — Obstruction of navigable stream — Standing of licensee.

5. The fact that a hydroelectric power company holds a license from the Federal Power Commission for the construction of a power plant on one river, which license does not purport to grant to the licensee any sort of license exclusive or otherwise for the sale of electric power, does not give the licensee standing to enjoin the unlawful obstruction of other public waters in the state by the construction of a power project by a state authority, p. 62.

Monopoly and competition, § 23 — Rights under Federal power license.

6. The provisions of the Federal Water Power Act giving the Commission the right to regulate rates in the absence of regulation by a state Commission and to require the development of a power project to meet the needs of the public are provisions designed to protect the public against exorbitant rates and the withholding of natural resources from profitable use, not provisions granting to the licensee any sort of monopoly or franchise for the sale of electric current or immunity from any sort of competition in the sale thereof, p. 63.

Parties, § 10 — Enforcement of public rights — Standing of taxpayer.

7. Hydroelectric power companies have no standing as taxpayers of a state to complain of the making of a Federal loan and grant in aid of the construction of a power project by a state authority, p. 63.

Parties, § 10 — Enforcement of public rights — Standing of taxpayers.

8. Hydroelectric power companies have no standing as taxpayers of a state to complain that the obstruction of a navigable stream is in violation of a Federal statute, in the absence of a showing of direct and special injury resulting therefrom; the fact that they are taxpayers does not give them any special right in the stream which will be invaded by obstruction, p. 63.

Courts, § 23 — Stare decisis — Federal court following law of state — Matters of practice.

9. Federal courts of equity are not governed by state law in matters of practice, although they look to the law of the state for the ascertainment of rights of a substantive character, p. 64.

Judgment, § 2 — Estoppel to taxpayer's suit.

10. A judgment in a taxpayer's suit to enjoin a state power authority from constructing a hydroelectric project is an estoppel against another suit by a taxpayer asking the same relief, not only as to the questions actually raised and decided, but as to all other questions which could properly have been raised and decided therein, p. 64.

Courts, § 1 — Jurisdiction — Question of proper parties.

11. The question of the right of a plaintiff to maintain a suit, although frequently treated as going to the question of jurisdiction, goes in reality to the right of the plaintiff to relief rather than to the jurisdiction of the court to afford it, p. 64.

[February 2, 1938.]

APPEAL *from order denying injunction in cases instituted to enjoin the South Carolina Public Service Authority from constructing a hydroelectric project and the Federal Administrator of Public Works from making a loan and grant in aid thereof; affirmed. For lower court decision, see 20 F. Supp. 854.*

APPEARANCES: William M. Rogers, of Birmingham, Ala., and Raymond T. Jackson, of Cleveland, Ohio (W. H. Weatherspoon, of Raleigh, N. C., Arthur R. Young, of Charleston, S. C., W. C. McLain, of Columbia, S. C., and A. J. Bowron, Jr., and Douglas Arant, both of Birmingham, Ala., on the brief), for appellants; R. M. Jefferies, of Walterboro, S. C., and Paul Freund, Special Assistant to Attorney General (W. J. McLeod, Jr., of Miami, Fla., James W. Morris, Assistant Attorney General, and Enoch E. Ellison, Attorney, Department of Justice, Carl F. Farbach, Robert E. Sher, and Joseph B. Hobbs, of Federal Emergency Administration of Public Works, all of Washington, D. C., on the brief), for appellees; Oswald Ryan, General Counsel, Federal Power Commission, of Washington, D. C. (Howard E. Wahrenbrock, Willard W. Gatchell, and William C. Koplovitz, all of Washington, D. C., on the brief), for Federal Power Commission, amicus curiae.

Before Parker, Northcott, and Soper, Circuit Judges.

PARKER, Circuit Judge: These are appeals from an order denying an injunction in three consolidated cases instituted to enjoin the South Carolina Public Service Authority from constructing the Santee-Cooper Power-Navigation Project and Harold L. Ickes, Federal Administrator of Public Works, from making a loan and grant in aid thereof. The plaintiffs are hydroelectric power companies doing business in the state of South Carolina, one of them, the Carolina Power & Light Company, holding a license from the Federal Power Commission for a hydroelectric project which it operates on Big Pigeon river in Haywood county, N. C. The defendant South Carolina Public Service Authority is a body corporate created as a governmental agency of the state of South Carolina by Act No. 887 of the General Assembly of 1934, 38 Stat. at L. p. 1507, and authorized thereby to construct a power and navigation project on the Santee and Cooper rivers and to divert the waters of the Santee into the Cooper for that purpose. A loan and grant aggregating $37,500,000 in aid of the project has been approved by the Administrator of Public Works and an agreement to advance $6,000,000 thereof to begin construction has been executed.

The project may be briefly described as follows: The Santee and Cooper are navigable rivers, the navigable portions of which lie wholly within the state of South Carolina. While they are navigable for a considerable distance, the navigation which they carry at this time is of an entirely negligible character. It is proposed by means of the project to provide an improved water route from Columbia to Charleston which will really be useful for purposes of navigation, and which will shorten the distance of water transportation between these cities from 246 to 145 miles, and at the same time to construct a hydroelectric power plant capable of producing annually 450,000,000 kilowatt hours of primary power and 200,000,000 kilowatt hours of secondary power. This is to be accomplished by constructing a diversion dam at Wilson's Landing in the Santee, about 87 miles above its mouth, and diverting the flow of that river, with the exception of about 500 c.f.s., through a canal into the Cooper. A power dam, with appropriate navigation locks, is to be constructed in the latter river at Pinopolis, and by the use of appropriate electrical generating machinery the potential energy of the impounded water is to be converted into electric current.

The result of the construction of the project will be to decrease the navigable capacity of the Santee below the diversion dam; but provision is made in the license granted therefor to take care of any future need of navigation in that part of the river by providing that the flow below the dam shall be increased by releasing such additional quantities of water as in the opinion of the Chief of Engineers of the War Department and the Secretary of War may be necessary for the proper operation of navigation facilities to be provided by the government. The project has been authorized by the South Carolina legislature by Act 887 of the General Assembly of 1934, which has been upheld as constitutional by the supreme court of South Carolina. Clarke v. South Carolina Public Service Authority (1935) 177 S. C. 427, 181 S. E. 481. It has been licensed also by the Federal Power Commission, after approval by the Chief of Engineers of the War Department and the Secretary of War. It appears also that Congress, after being advised as to the project and the earmarking of funds for the loan and grant in aid thereof, has appropriated additional funds for carrying it on. Public Resolution No. 47, 75th Cong. June 29, 1937, Chap. 401, § 205(e), 15 USCA § 728 note. See also Senate Document 184, 74th Cong. 2d Sess. p. 11, and 81 Cong. Rec. 6054 and 81 Cong. Rec. 8304.

[1–3] Injunctions are sought by plaintiffs to restrain not only the making or receiving of the Federal loan and grant in aid of the project but also the construction of the project itself on the ground that it involves the impairment of the navigable capacity of a portion of a public waterway. As to this, the plaintiffs contend that both the license of the Federal Power Commission and the South Carolina statute authorizing the project are invalid, the former because not authorized by a valid act of Congress, the latter because in contravention of the Constitution of the state. All of these matters are fully discussed in the able and

exhaustive opinion of the court below, reported in (1937) 20 F. Supp. 854. We find it unnecessary to consider them here, since we think it clear, in the light of recent decisions of the Supreme Court, that plaintiffs have no standing in court to urge them as no right of plaintiffs will be infringed by the acts which it is sought to enjoin. Alabama Power Co. v. Ickes (1938) 302 U. S. —, 82 L. ed. —, 21 P.U.R.(N.S.) 289, 58 S. Ct. 300, 306; Duke Power Co. v. Greenwood County (1938) 302 U. S. —, 82 L. ed. —, 21 P.U.R.(N.S.) 298, 58 S. Ct. 306.

There can be no question, under the cases cited, but that plaintiffs have no standing to question the making of the loan and grant by the Administrator of Public Works, and we shall not discuss that matter further. We think it equally clear that they have no standing to question the legality of the construction by the defendant Authority of the prospective dams and waterways contemplated by the project. It is admitted that none of the plaintiffs has a franchise which is exclusive as against the Authority, that none of them has any prior or superior interest in the project or the license therefor, that none of them claims any injury or threat of injury to any special right or interest as owner of riparian lands which will be flooded, eroded, or deprived of water, and that none of them has any interest in navigation on the river in question, as operator of vessels, owner of wharves, shipper, or otherwise. The only interest which plaintiffs claim to have in the matter is that they will be damaged by reason of the fact that the defendant Authority will sell electric current in competition with them and that the construction of the project will enable it to produce the current. As plaintiffs have no exclusive franchise for the sale of electric current, however, no right of theirs will be invaded by competition on the part of the Authority or by any sales which it may make. So far as production of current is concerned, no right of theirs could possibly be infringed thereby, whether the obstruction and diversion of the Santee resulting in its production be lawful or not. Since, therefore, neither the sale of electric current nor the obstruction or diversion of the stream infringes any right of plaintiffs, it must follow that both together do not infringe such right. It has never yet been held, so far as we are aware, that the mere fact of competition entitles one whose rights are not invaded to enjoin the unlawful acts of a competitor. If, as held in the Alabama Power Case, plaintiffs have no ground to complain of an unlawful lending of money to enable a competitor to manufacture electric power to sell in competition with them, we fail to see how they can have ground of complaint because of the unlawful obstruction of a stream for that purpose.

In the case of New Orleans, M. & T. R. Co. v. Ellerman (1882) 105 U. S. 166, 174, 26 L. ed. 1015, cited as directly in point in the Alabama Power Case, it appeared that the owner of certain public wharves in New Orleans had brought suit to enjoin the leasing of competing wharves by a railroad company on the ground that such action on its part would be ultra vires. It was held that the plaintiff had no standing in court, merely because he would be injured by the competi-

tion which would result from the ultra vires leasing of the property, to question that action. The court in its opinion used the following language, quoted with approval in the Alabama Power Case, *supra*, at p. 296 of 21 P.U.R. (N.S.): "The only injury of which he can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If he asserts that the competition of the railroad company damages him, the answer is, that it does not abridge or impair any such right. If he alleges that the railroad company is acting beyond the warrant of the law, the answer is, that a violation of its charter does not of itself injuriously affect any of his rights. The company is not shown to owe him any duty which it has not performed." Applying this language to the case at bar we may say that the only injury of which plaintiffs can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If they assert that the competition of the defendant Authority will damage them, the answer is that such competition will not abridge or impair any such right. If they allege that the Authority is violating the law in interfering with the navigability of the lower Santee, the answer again is that such violation does not injuriously affect any of their rights.

[4] Much of the record and briefs is taken up with matters bearing upon the legality of a project which will result in the obstruction of a navigable stream, and all of the argument with respect to the validity of the license and the statute have to do with this question; but it is perfectly well settled that any unlawful obstruction of a navigable stream or a public highway is a matter for the public authorities, not a matter of which private individuals may complain, unless they suffer some direct and special injury to their rights not common to the public. Sullivan v. American Mfg. Co. (1929) 33 F. (2d) 690, 692; Radford Iron Co. v. Appalachian Electric Power Co. (1933) 62 F. (2d) 940, 942; Georgetown v. Alexandria Canal Co. (1838) 12 Pet. 91, 100, 9 L. ed. 1012; Irwin v. Dixion (1850) 9 How. 10, 26, 13 L. ed. 25; Mississippi & M. R. Co. v. Ward (1862) 2 Black, 485, 17 L. ed. 311; Lownsdale v. Gray's Harbor Boom Co. (1902) 117 Fed. 983; Fanning v. Stroman (1920) 113 S. C. 495, 101 S. E. 861; Gray & Shealy v. Charleston & W. C. R. Co. (1908) 81 S. C. 370, 62 S. E. 442; South Carolina Steamboat Co. v. Wilmington, C. & A. R. Co. (1896) 46 S. C. 327, 24 S. E. 337, 33 L.R.A. 541, 57 Am. St. Rep. 688; Blanding v. Las Vegas (1929) 52 Nev. 52, 280 Pac. 644, 68 A.L.R. 1273; 13 R. C. L. 227; 27 R. C. L. 1346; 45 C. J. 477, 478; 29 C. J. 627; notes, 4 L.R.A. 209, 59 L.R.A. 1, 81. And, with respect to obstruction of navigable waters, provision is expressly made by Federal statute for the Attorney General of the United States to institute proceedings for the removal of such obstructions. 30 Stat. 1151, as amended 33 USCA § 406; 41 Stat. 1076, 16 USCA § 820. Whether the remedy thus provided is exclusive where private persons sustain direct and special injury as a result of the invasion of their rights, we need not decide. Cf. Minnesota v. Northern Securities Co. (1904) 194 U. S. 48, 70, 48 L. ed. 870, 24 S. Ct. 598; Paine Lumber Co. v. Neal (1917) 244 U. S. 459, 471, 61 L. ed.

1256, 37 S. Ct. 718. It is sufficient for the decision here that, in the absence of such direct and special injury, suit by private persons on account of such obstruction may not be maintained.

[5] And we do not think that the plaintiff Carolina Power & Light Company has any better standing to ask the relief prayed, because of the license which it holds from the Federal Power Commission. That license was for the construction of a power plant on Big Pigeon river in Haywood county, N. C., more than 200 miles from the Santee-Cooper project and on an entirely different watershed. It merely licensed the construction of a power project in the river in question subject to the provisions and limitations of the Water Power Act, as amended, 16 USCA §§ 791a–823, and did not purport to grant to the licensee any sort of license, exclusive or otherwise, for the sale of electric power. The idea that the mere granting of such a license should give the licensee standing to enjoin the unlawful obstruction by its competitors of other public waters in which it is not otherwise concerned, is one for which we can see no support in law or in reason. Plaintiffs rely upon the case of Frost v. Oklahoma Corp. Commission, 278 U. S. 515, 73 L. ed. 483, P.U.R. 1929B, 634, 49 S. Ct. 235; but the extent of the holding there was that the holder of a nonexclusive franchise was entitled to enjoin the competition of one who was subject to but did not comply with the franchise requirements of the same statute. The rationale of the decision is that a state statute regulating a business affected with a public interest and requiring a determination of public convenience and necessity creates a quasi monopoly for those engaged therein and gives them a right to enjoin competition by those who have not complied with its provisions. In distinguishing that case in the Alabama Power Case, *supra*, at p. 297 of 21 P.U.R.(N.S.), the Supreme Court said of it: "Appellant there owned a cotton-ginning business in the city of Durant, Oklahoma, for the operation of which he had a license from the Corporation Commission. The law of Oklahoma, Comp. Laws 1921, § 3713 (17 Okla. Stats. Ann. § 42), provided that no gin should be operated without a license from the Commission, which could be obtained only upon specified conditions. We held that such a license was a franchise constituting a property right within the protection of the Fourteenth Amendment; and that while the acquisition of the franchise did not preclude the state from making similar valid grants to others, it was exclusive against an attempt to operate a competing gin without a permit or under a void permit. The Durant Co-operative Gin Company sought to obtain a permit from the Commission which, for reasons stated in our opinion, we held would be void and a clear invasion of Frost's property rights. We concluded that a legal right of Frost to be free from such competition would by invaded by one not having a valid franchise to compete, and sustained Frost's right to an injunction against the Commission and the Durant Company. See Oklahoma Corp. Commission v. Lowe, 281 U. S. 431, 435, 74 L. ed. 945, P.U.R.1930C, 321, 50 S. Ct. 397. The difference between the Frost Case and this is fundamental;

for the competition contemplated there was unlawful while that of the municipalities contemplated here is entirely lawful."

[6] In the case at bar the competition which the defendant Authority will afford by the sale of electric current is unquestionably lawful; and in no aspect of the case is anything said to be unlawful except the obstruction of the Santee and the procuring of the loan and grant, which are not matters of competition at all. If defendant Authority were attempting to interfere with the matters covered by the Carolina Power & Light Company's license, as by attempting to interfere with the flow of Big Pigeon river, a case for injunctive relief might well be presented; but certainly no such case is made by the selling of electric current in competition with the licensee, when the license is merely one for the damming of a river and does not purport to grant a franchise of any sort for the sale of electric current. The provisions of the Water Power Act giving the Commission the right to regulate rates in the absence of regulation by a state Commission and to require the development of the project to meet the needs of the public, are provisions designed to protect the public against exorbitant rates and the withholding of natural resources from profitable use, not provisions granting to the licensee any sort of monopoly or franchise for the sale of electric current or immunity from any sort of competition in the sale thereof.

Other cases relied upon by plaintiff, viz., Campbell v. Arkansas-Missouri Power Co. (1932) 55 F. (2d) 560; Iowa Southern Utilities Co. v. Cassill (1934) 69 F. (2d) 703; Arkansas-Missouri Power Co. v. Kennett (1935) 78 F. (2d) 911, 21 P.U.R.(N.S.) 612, and Gallardo v. Porto Rico R. Light & P. Co. (1927) 18 F. (2d) 918, are readily distinguishable, as they merely hold that one who has a nonexclusive franchise is entitled to protection against the illegal acts of others "who propose to exercise the privilege conferred by the franchise." Without deciding whether or not this is a proper extension of the doctrine of the Frost Case, as to which much doubt may well be entertained, it is clear that such extension of that doctrine does not help the position of the Carolina Power & Light Company, since the license which it holds from the Power Commission does not confer upon it the privilege of selling electric current in the territory which it serves, but merely of constructing a power project in Big Pigeon river, a privilege which none of the defendants is proposing to exercise.

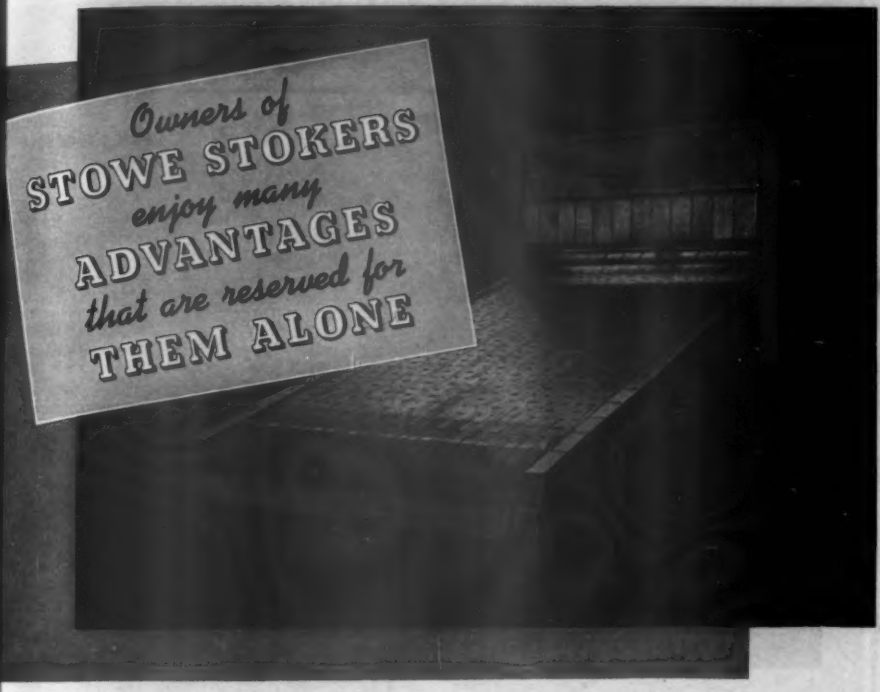
[7, 8] Plaintiffs contend that they have standing as taxpayers of the state of South Carolina to maintain the suit, particularly in so far as it relates to the obstruction of one of the navigable waters of the state. It is clear, of course, that the fact that they pay taxes to that state can give them no right to complain of the making of the Federal loan and grant. Allegan v. Consumers' Power Co. (1934) 71 F. (2d) 477, 21 P.U.R.(N.S.) 529. And we think it equally clear that that fact gives them no standing to complain that the obstruction of a navigable stream is in violation of a Federal statute. And, as noted above, it is settled law that, in the absence of a showing of direct and special injury resulting therefrom, one may not sue to enjoin

the obstruction of a navigable stream; and this rule is well established in South Carolina. South Carolina Steamboat Co. v. Wilmington, C. & A. R. Co. *supra;* South Carolina Steamboat Co. v. South Carolina R. Co. (1889) 30 S. C. 539, 9 S. E. 650, 4 L.R.A. 209, 14 Am. St. Rep. 923. And the fact that plaintiffs are taxpayers does not give them any special right in the stream which will be invaded by such obstruction; and they fall within the rule that one may not sue, merely because he is a taxpayer, to enjoin the obstruction of a public highway. Blanding v. Las Vegas, *supra,* and note at 68 A.L.R. 1297.

[**9, 10**] Plaintiffs rely upon Clarke v. South Carolina Pub. Service Authority (1935) 177 S. C. 427, 181 S. E. 481, as establishing the right of a taxpayer under the South Carolina practice to sue in such a case as we have here. But while Federal courts of equity look to the law of the state for the ascertainment of rights of a substantive character, in matters of practice they are not governed by state law. Cf. Henrietta Mills v. Rutherford County (1930) 281 U. S. 121, 127, 74 L. ed. 737, 50 S. Ct. 270, 272. If, however, we could look to the state practice, it is clear that the right of plaintiffs as taxpayers to maintain this suit is precluded by the decision in the Clarke Case, which was another taxpayer's suit to enjoin the same project. Under the law of South Carolina the judgment therein was an estoppel against another suit by a taxpayer asking the same relief, not only as to the questions actually raised and decided, but also as to all other questions which could properly have been raised and decided therein. Davis v. West Greenville (1928) 147 S. C. 448, 145 S. E. 193; State ex rel. Brown v. Chester & L. N. G. R. Co. (1879) 13 S. C. 290. And this is the general law. See Eaton v. Mooresville Graded School (1922) 184 N. C. 471, 114 S. E. 689; Greenberg v. Chicago (1912) 256 Ill. 213, 99 N. E. 1039, 49 L.R.A.(N.S.) 108, and note; Ashton v. Rochester (1892) 133 N. Y. 187, 30 N. E. 965, 31 N. E. 334, 28 Am. St. Rep. 619; McIntosh v. Pittsburg (1901) 112 Fed. 705, 707; Stevens v. Shull (1929) 179 Ark. 766, 19 S. W. (2d) 1018, 64 A.L.R. 1258; notes, 20 A.L.R. 1133, 1134, 64 A.L.R. 1262. It is clear, therefore, that with respect to questions which plaintiffs might raise in their capacity as taxpayers of the state, they are concluded by the decision of the supreme court of South Carolina in the Clarke Case.

[**11**] For the reasons stated the decrees appealed from will be affirmed. While the question of the right of plaintiff to maintain the suit is frequently treated as going to the question of jurisdiction, it goes, in reality, to the right of plaintiff to relief, rather than to the jurisdiction of the court to afford it. Greenwood County v. Duke Power Co. (1936) 81 F. (2d) 986, 999.

Affirmed.



● A positive rear end air seal eliminating rear arches, and water backs, and permitting a less costly furnace construction . . . 50% less carbon loss in the ash . . . an even depth of fuel bed maintained automatically, side to side and front to rear, providing uniform passage for the air, eliminating stratification of the gases and permitting rapid pickup . . . these are just a few of the many exclusive features Stowe Stokers, and only Stowe Stokers, can give you.

Of great importance to management and purchasing personnel is the unlimited fuel selection. Stowe Stokers of similar construction are burning the entire range of fuels from 5% Pocahontas slack to the high ash low fusing coals found west of the Mississippi River. They permit operators to burn the coal that represents lowest cost per B.t.u. laid down on their storage piles, and to change from one coal to another as strikes, fires, fluctuating mine prices and changing rail, water or truck rates, makes this coal or that the most advantageous to burn.

Characterized by impartial observers as the greatest forward step in mechanical firing in the last ten years, Stowe Stokers are the obvious first choice for new boiler and modernization projects. Write for a full description and the illustrated catalog. It will pay you to investigate Stowe Stokers' possibilities for your plant!

GET A STOWE STOKER PROPOSITION . . . A LETTER WILL BRING IT ●

THE JOHNSTON and JENNINGS CO., 977 Addison Rd., Cleveland, Ohio

STOWE STOKERS

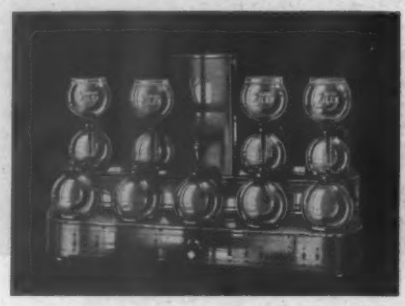
Compensating Feed

Industrial Progress

Silex Offers Utilities New Load-Building Programs

NEW load-building opportunities for utilities are being offered by The Silex Co., Hartford, Conn., through sales promotion programs of glass coffee makers for commercial and domestic users.

To help commercial users of coffee-making equipment modernize this spring, Silex is offering for a limited time, an "impossible to refuse" trade-in plan. Trade-in allowances are



The 8-Unit Carlton

as high as $50.00. And in addition to the allowance, a Moldex Upper Bowl Holder is included free with the purchase of each trade-in model.

The trade-in allowances are made on a selected list of the most popular Silex models in each size of both the gas and the electric equipment. The amount of the trade-in varies according to the size and value of the Silex Glass Coffee Maker.

The model pictured—the 8-unit Carlton—with a stainless steel range and a built-in hot water tank, which has a thermostatic heat control and an automatic filling device—assuring automatic control of both water level and water temperatures—has a $50.00 trade-in allowance, plus the free Moldex Bowl Holder.

To help dealers capture their portion of the $30,000,000 Bride Market, Silex is offering also, for a limited time, an attractive "Bride's Special." It consists of the new Delray model Silex Glass Coffee Maker, with a new, low, graceful stove—and Strainex—the Silex exclusive, patented tea-straining device, which converts the Silex lower bowl into a self-straining tea maker. "It strains as it pours."

This Bride's Special, a combination for making both coffee and tea—a $6.05 value—is offered until June 30, 1938, at a special retail price of only $4.95 with black trim. Red trim, a $6.35 value, for $5.25. The Bride's Special may be had in either the 6 or the 8-cup size.

A.G.A.E.M. President Stresses Coöperative Effort

THE importance of greater coöperation between the gas utilities and the manufacturers of gas appliances and equipment in their respective promotional and selling campaigns was stressed by Merrill N. Davis, president of the Association of Gas Appliance and Equipment Manufacturers, in an address before the annual convention of the Natural Gas Department of the American Gas Association held recently in New Orleans, La.

Mr. Davis, who is executive vice-president of the S. R. Dresser Manufacturing Co., Bradford, Pa., pointed out that there are 12,000,000 prospects for up-to-date gas ranges throughout the United States, and he urged the utilities to go after that business as one of the ways in maintaining the gas load. It is up to the gas company and the appliance manufacturer to make a strong coöperative effort to retain that load for the gas company and to capture that potential appliance business for the manufacturer, Mr. Davis stated.

Steam Jet Ejectors

INGERSOLL-RAND Company of New York announces the publication of a new bulletin covering single-, two-, and three-stage steam jet ejectors for removing air, gas, or vapors from condensers and vacuum chambers in industrial processes. Features of this

High Vacuum Boosters

type of vacuum pump include the ability to handle any quantity of wet or dry mixtures at any vacuum, high sustained efficiency, low initial and maintenance cost, and economical trouble-free operation.

This 28-page bulletin, No. 9046, explains the application and characteristics of ejectors and illustrates the operation and arrangement of all types of ejectors with either surface or

barometric precoolers, inter and after condensers.

The accompanying illustration shows two large high-vacuum boosters which are used to compress process steam to a lower vacuum at which it can be condensed with available cooling water.

Varnished-Cambric-Insulated Cable Data Issued

MUCH new data on varnished-cambric-insulated cable are contained in a 32-page bulletin (GEA-2623) issued by the General Electric Company. Entitled "Varnished-cambric Insulated Cable," it supplies information on the types available, their construction and characteristics, and the applications for which they may be best adapted. This publication also includes simplified data on how to select conductor size.

The part of the subject matter dealing with standard cable types is treated broadly under the three major heads of conductor, insulation, and finish—the three main constituents of an insulated cable. Those types which are generally considered as special for certain applications, such as line wire and apparatus leads, are described under separate headings.

Among the new types treated in Glyptal cloth interlocked cable, which has proved well suited to indoor wiring. It can resist high, ambient temperatures, overloads, and oil.

Other authoritative G-E publications of service to users of insulated cable are: GEA-1837, "How to Select Insulated Cable," and GEA-2215, "Aerial Cable."

New ¾-Ton Dodge Trucks

A NEW line of Dodge ¾-ton trucks was announced recently by Joseph D. Burke, Director of truck sales, Dodge Division of Chrysler Corp.

Wide utility, low price and economy of operation are features of this new line designed for operators who require greater load space than is found in the ½-ton commercial car but whose loads are smaller than those handled by 1- and 1½-ton trucks.

The new vehicles carry a maximum gross weight rating of 5200 pounds.

The line is available in two wheelbase lengths and body sizes. Chassis with flat cowl face, chassis and cab, express, stake and platform body types are available on a 120-inch wheelbase while the aforementioned, plus panel and canopy models are available on a 136 inch wheelbase.

Duff-Norton Pipe Pulling And Pushing Jacks

A NUMBER of important time- and labor-saving advantages in the laying of pipe lines are afforded through the use of a new Duff-Norton Pipe Pulling and Pushing Jack recently placed on the market.

Designed primarily for pulling and pushing without changing the position of the Jack, this new geared type Duff-Norton unit represents the most powerful tool of its kind. It is capable of forcing pipe up to six inches in diameter. The tearing up of lawns, streets, highways or holding up of railroad traffic is obviated by its use.

The new Duff-Norton Pipe Pulling and

Pushing Jack is an invaluable aid to contractors, plumbers, public utility companies, oil companies, municipal and railroad construction projects, etc., and wherever iron or steel pipe, electric conduit or lead cable must be laid.

Literature describing this and other products of the company may be had by writing the Duff-Norton Manufacturing Company, 2709 Preble Avenue, Pittsburgh, Pa. Kindly ask for form number 120.

New ¾-Ton Dodge Truck with 9-ft body length

Gate Operated by Remote Control

New Kinnear Gate Operator

With the new electric, motor-driven gate operator, just announced by the Kinnear Manufacturing Company, 155 Fields Avenue, Columbus, Ohio, it is possible to open or close the sliding type of gate such as is widely used on industrial premises, from remote control stations, placed at convenient points inside or outside. The momentary-contact control switch is provided with "Open," "Close" and "Stop" buttons, which permit a watchman or other authorized persons from visible stations, to operate the gate at an approximate speed of 2 feet per second, without wasting time and effort and without inconvenience. Where special conditions require, other type controls such as key operated types can be furnished.

The gate is attached by means of a spring-cushioned operating arm to an endless roller chain travelling back and forth over cut steel sprockets, driven by the electric operator. The motor is provided with a slip clutch which prevents the power unit from damaging the equipment in case the unit is stopped by some obstacle in the opening. The operator and travelling roller link chain is encased against weather in a metal housing.

Manufactured by a company that is well-known, not only for Kinnear Rolling Doors, but also for Kinnear Door Operators, it is reported that this new gate operator embodies proved features for added dependability and emergency conditions that have proved their value in other Kinnear equipment for a number of years.

Have You the Proper Light?

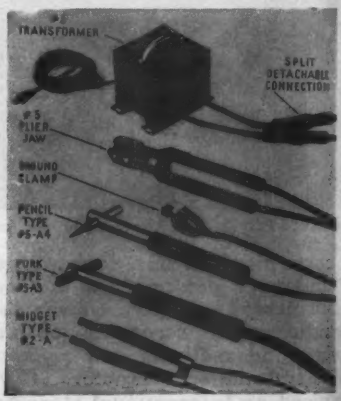
The new American Recommended Practice of School Lighting (A23-1938, price 25c) published by the American Standards Association, gives basic information on how much light and what kind of light is needed for various daily tasks.

Prepared under joint sponsorship of the Illuminating Engineering Society and the American Institute of Architects, this new publication recommends the proper light intensities for: classrooms, offices, sewing rooms, drafting rooms, art rooms, etc., auditoriums, and cafeterias. Such important factors to eye comfort as color quality of light, light reflection from ceilings and walls, and diffusion, distribution, and direction of lighting are discussed.

A representative committee, including ophthalmologists, physicists, architects, public health officials, power company representatives, educators, and labor officials, has developed this standard.

Electric Soldering Unit

A new all-purpose "Deluxe" Thermo-Grip soldering unit for all types of soft soldering work has recently been introduced by the Ideal Commutator Dresser Co., 1558 Park Avenue, Sycamore, Illinois. These new soldering tools operate electrically so that they serve



Thermo-Grip Soldering Unit

public utilities in two capacities. First, they afford an easier, quicker and safer means of soldering and, second, they promote the use of electrical energy.

The complete soldering unit consists of a transformer and four heads or tools. Simply plug into any A. C. supply and it is ready for use immediately. All current carrying parts are fully insulated, which makes this device completely safe.

On soldering jobs where speed is particularly necessary, a new foot-operated switch is available.

Broken Pipe Extractor

REPS Tool Inc., 220 Delaware Ave., Buffalo, N. Y., announces the Reps Extractor for extracting broken pipe and studs.

The patented four-point grip prevents the extractor from reaming and assures strong bite without hammering or pounding. Shal-

low grip greatly lessens any expansion and jamming and the extractor releases instantly from bite after job is completed.

A built-in reamer automatically removes burrs from pipe, eliminating interference with extractor's bite and minimizing cause for expansion of broken piece. The extractor pulls rather than reams.

The complete set of only 10 Reps Extractors fits every size and class of pipe, standard, heavy or extra heavy from ⅛ inch to 2 inches. This same set of tools fits every size of studs, screws and bolts from 7/16 inch to 3½ inches.

Silex Expands Facilities

TO meet the rapidly growing demand for Silex Glass Coffee Makers, The Silex Company has acquired approximately an acre and a half of land adjoining their plant, at Hartford, Conn., with a two-story brick building of mill construction.

When alterations are completed, the new building will be used for the production of materials which in the past have been purchased from outside sources of supply.

Award for Dr. Whitney of G.E.

DR. Willis Rodney Whitney, General Electric vice-president in charge of research, was awarded the Marcellus Hartley Gold Medal by the National Academy of Sciences at its annual meeting held recently in Washington, D. C.

The award is given by the academy "to mark the appreciation of the National Academy of Sciences for eminent services to the public, performed without a view to monetary gains and by methods which in the opinion of the Academy are truly scientific."

Dr. Whitney's pioneering work in making science available to industry by his creation and development of the General Electric research laboratory is probably his most notable achievement.

Kinnear's Door Catalog

KINNEAR doors and door products are illustrated and described in detail in a new 24-page catalog No. 19 (A.I.A. File No. 16-D-13).

Since its founding, 42 years ago, The Kinnear Manufacturing Company has devoted its exclusive efforts to the manufacture of doors and door operating equipment. Steel rolling service doors, fire doors and fire shutters, wood and steel rol-top doors, wood and steel bifolding doors and metal rolling grilles, and motor operated doors are included among Kinnear's products.

The catalog outlines the complete door service offered by the manufacturer and states the time tested advantages of Kinnear rolling doors as reported by users throughout the world. Architects' specifications are given.

New G. E. Publications

Instruments: Commercial testing instruments, Type AP-9, portable, medium-sized voltmeters, ammeters, milliammeters, voltwattmeters, and wattmeters. (GEA-2823-24). Laboratory and specialty instruments (GEA-2825). Switchboard instrument, Type AD-6 (GEA-2821). Small Panel Instruments (GEA-2822). Dew-Point potentiometer for determining moisture content of gases (GEA-2630).

Motors and Generators: Type B direct-current motors (GEA-1542-C). Gear-motors (GEA-1437-C). Type B and Type CD direct-current generators and excitors (GEA-1607B and GEA-432C, supersedes GEA-432B).

Switching Equipment: "Outdoor Power Switching Equipment 1938." Illustrated catalog, 176 pages. Magnetic motor-starting switches CR7006 (GEA-2889). CR2931 float switches for use with automatic pumping equipments for water-level control (GEA-67E). A-C magnetic switch, Size One, CR7006-D40 (GEA-841H—supersedes GEA-841G).

Transformers: Indoor current transformer Type JW-1, 5,000-volt (GEA-2432). Novalux constant-current transformers, Type RF, Automatic Station Type (GEA-1086B).

Other Products: Type Flo-1, outdoor oil-blast circuit breakers (GEA-2426A). Automatic oil circuit recloser for the protection of suburban, branch, and rural lines, Type FP-19 (GEA-2003B). Pyronol Capacitors for low-voltage industrial applications (GEA-2742).

A 16-page bulletin, "Reconditioning Flooded Electric Equipment" (GEA-2571B) is among other literature recently published.

Air Conditioning Unit for Commercial Applications

A THREE-TON capacity, self-contained air conditioning unit, designed especially for retail establishments and other commercial applications of average requirements, has been developed by Delco-Frigidaire Conditioning Division, General Motors Sales Corporation.

Built in the air conditioning equipment manufacturing plant of General Motors in Dayton, the new unit provides cooling, dehumidification, filtering and air circulation. A heating coil may be added as optional equipment to provide year 'round utility, and provision may be made for ventilation by a simple duct connection.

International Wheel Tractor

AN illustrated pamphlet (A. 268-BB) describing the International Diesel ID-40 wheel tractor has been issued by International Harvester Company, Chicago, Ill.

With a maximum engine horsepower of 58, this wheel tractor provides the smooth, dependable responsive power required for heavy "lugging" work such as is encountered around public utility plants.

Baltimore Transit Modernizes

ADDITION of 21 trackless trolleys and one all-service vehicle to its system has carried one step further the modernization program of the Baltimore Transit Company. The new vehicles are of the 40-passenger, front-entrance, center-exit type.

Inasmuch as trackless trolley transportation was entirely new to Baltimore, the transit company offered free rides to the public for several days prior to the official inauguration of the new service, as a means of acquainting its customers with the better service to be made available. The trackless trolleys replaced street cars on the line on which they were installed.

Baltimore Transit began its modernization program eight years ago, adding gas-electric and Diesel-electric buses to its service. The total of this type vehicle now operated by the company is 58. Last year the company put 27 PCC cars into service.

Instrument Screw Driver

STANLEY Tools offers a new No. 1017 instrument screw driver, for tightening and loosening screws on small recording and dial instruments, small auto parts, locks, etc.

The handle is made of amber colored "Stanloid," toughest nonmetallic substance known, and it is hexagon shaped to keep it from rolling and to permit a firm finger grip. The blade, 1¼ in. long, is made of tempered steel and is nickel plated.

Improves Fulscope Controller

THE Taylor Instrument Companies, Rochester, N. Y., have added an important new feature—a manual by-pass—to the Taylor Fulscope Micromax Controller. Details of this controller instrument were announced in the October 14, 1937, issue of the FORTNIGHTLY, page 52.

With the manual by-pass now standard equipment on the controller, it enables the operator to change the controlling-medium imput at the instrument where its effects are recorded. Furthermore, it permits adjustments or repairs to the instrument without unduly disturbing the heat balance in the apparatus.

Controller with Manual By-Pass

Orders 9,000 Floodlights

NINE thousand floodlights of a variety of types and sizes will convert the Golden Gate International Exposition into a magical city emerging from San Francisco Bay at night. The contract for supplying these lights has been awarded to the General Electric Company, according to an announcement by W. P. Day, vice president and director of works for the forthcoming celebration at San Francisco. It is the largest single order for floodlights ever placed.

A New Low-Cost Foam Tool!

Combines Water, Solution and Air To Form Fire-Smothering Foam

ublic utilities are welcoming this revolu-onary larger-capacity foam equipment for ammable liquid fires.

he specially designed PHOMAIRE Play ipe connects to your hose line (¾" to 2½"). When the water is turned on, PHOMAIDE, new foam-making solution carried in a Hip ack, and air are automatically drawn into he water stream in the proper proportions o form foam.

here are no complicated preliminaries, no onfusing adjustments, no moving parts. And nly one man is required at the Play Pipe.

Less than 20 gallons of water at a pressure of 75 pounds or more are required per minute. This is the only efficient foam unit available for small lines. One gallon of Phomaide Solution makes 350 gallons of foam. 300 to 400 gallons per minute may be continuously produced by merely pouring additional solution into the Hip Pack.

This is NEWS. Without obligation, ask for descriptive literature, prices and a demonstration of the Phomaire Unit illustrated at the left. Don't wait! Mail your request now.

Get the Latest Foam Equipment

Phomaire PLAY PIPE and Phomaide SOLUTION

developed, made and sold by

Pyrene Manufacturing Company
NEWARK NEW JERSEY
ATLANTA KANSAS CITY CHICAGO SAN FRANCISCO

ONE WAY...

without a → concrete envelope

OR ANOTHER

← "concreted-in"

BOTH CONDUITS cut Electrical Distribution Costs!

SELECTING the *right* electrical conduit to meet specific problems is an important factor in providing for permanent distribution savings.

Consider, therefore, the contributions made toward this end by both J-M Transite Conduit and Transite Korduct . . .

Both are asbestos-cement in composition . . . hence permanently resistant to corrosion, incombustible and weatherproof. In common, these materials possess an inherent durability that promises years of virtual freedom from maintenance.

And there are installation economies, too! In the case of Transite Conduit—its strength permits installation without an envelope. "Concreting-in" is eliminated. Large savings immediately effected.

As for Transite Korduct . . . it's the logical choice on all multiple-duct transmission systems—or wherever the service calls for "concreting-in." For here, its light weight and long lengths reduce both materi and handling costs.

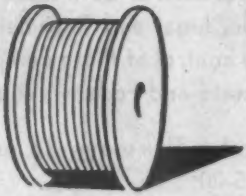
For free data-sheet manuals on both Transit Conduit and Transite Korduct, write Johns Manville, 22 E. 40th St., N. Y. C.

Johns-Manville
TRANSITE CONDUIT
for use underground without concrete envelope and for exposed locations

TRANSITE KORDUCT
for installation in concrete

JM

A·C·S·R



Although vibration of conductors is more frequently encountered with longer spans and higher tensions, you need have no trouble from this source. Vibration control has been developed by A.C.S.R. engineers, who offer a complete vibration damping service. Control devices properly installed insure that long span construction will also be long-lived.

ALUMINUM COMPANY OF AMERICA

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ALCOA · ALUMINUM

A set-up for meeting special requirements in strand

WHEN special characteristics are required in strand, the place to begin is at the open-hearth furnace. The complete integration of all manufacturing operations under Bethlehem's system of control, beginning with steel making and following through all subsequent phases, is an important factor in making strand to meet special conditions.

BETHLEHEM STEEL COMPANY

The PITTCO STORE FRONT CARAVAN *Returns!*

Another chance to tie up with this potent builder of new lighting customers! Another opportunity to sell more current by showing the merchants and property-owners in your territory the advantages of modern, business-building store front lighting and design.

The Pittco Store Front Caravan, with twelve scale models of modern, properly illuminated store fronts, is going to cover the entire country *again*. If it visited your territory on its first trip, you'll know how helpful it was to you in educating your prospects to a better appreciation of adequate store front illumination.

This time, the Caravan will cover your territory more broadly than before. Having presented its store front exhibit in all the metropolitan areas on its previous tour, it will this time present showings of its scale models in the more important *smaller* communities throughout your territory . . . giving every merchant and every property owner a chance to see it.

Watch for the return of the Pittco Caravan . . . and tie up with it in your sales efforts. Your nearest Pittsburgh Plate Glass Co. branch can give you specific information as to when it will revisit you.

Paint ✿ PITTSBURGH ✿ *Glass*
PLATE GLASS COMPANY

96 UTILITIES ARE WINNING FRIENDS THIS WAY

IGHT now, nearly a hundred electric-service companies—serving re than a half of all domestic meters this country—are co-operating in *New American Home Building Con-*. They are helping to sell a great idea *Better Living in Better Homes*. And ery time they succeed, two things ppen. First, the home builder, with a tter appreciation of electric service, ts more for the money he spends in his me. Second, the util- adds perhaps a 4000- ur home to its lines stead of an average of o. Furthermore it ns another booster r electric service.

To encourage this desirable activity, General Electric is offering to home builders $20,000 in prizes, and fifteen of the co-operating utilities are adding a total of $14,000 more. Known as General Electric's "Plan B," the contest is directed principally to builders of new homes, yet it also covers the modernization of old homes. It's simple, direct, and easy to handle. By selling your service, it will help you win friends. Write today for complete information. General Electric Home Bureau, 570 Lexington Avenue, New York City.

PLAN B is a logical follow-up to Plan A—the first step in the Electrical Standard of Living Program begun last fall. Plan A was eminently successful; electric-service companies distributed 14,000,000 contest folders, and 275,000 entries were submitted.

GENERAL ELECTRIC

96-470B

When You're Between the Devil and the Deep Sea

Assuredly an uncomfortable position, but one in which many utilities find themselves; faced with mounting operating costs on one hand, and, on the other, the insistent demand that present efficient, comprehensive service be maintained, and extended, at lower rates.

One unfailing way to reduce costs is to safeguard earnings at your most vulnerable point, by completely eliminating losses caused by current diversion. This can be accomplished immediately and permanently through the use of CB new sequence service entrance equipment to prevent the staggering, needless losses caused by tampering and diversion.

Scores of thousands of CB meter enclosures are annually saving their slight cost many times over, not only through prevention of current diversion, but through the time and labor economies they effect in installation.

SERVICE ENTRANCE EQUIPMENT

by Corcoran-Brown includes the widely used weather-proof, tamper-proof CB 14 meter enclosure in aluminum (illustrated) and drawn steel for indoor and outdoor use; meter test devices; meter service and entrance switches; range and water heater switches; meter cabinets; special equipment for specific requirements and other products. Complete data on CB equipment are found in Bulletins 57, 58, 60 and 61. Send for copies today.

Electrical Department

CORCORAN-BROWN LAMP DIVISION

THE ELECTRIC AUTO-LITE COMPANY

4900 Spring Grove Avenue Cincinnati, Ohio

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PROFESSIONAL DIRECTORY

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This Big RIDGID Makes Any 1 of Your Men As Valuable as 14

● Compound leverage does that money-saving trick for you. Because it has 14 times the leverage of a regular pipe wrench of equal jaw capacity (up to 8" pipe), one man can tighten or loosen pipe or fittings simply by slapping it on and pumping the handle.

No more wasteful effort of several men on a wrench with a pipe-extended handle just because the joint is hard to start. This RIDGID Compound Leverage tool makes it a cinch for one man, as thousands of canny buyers in all kinds of industries have discovered.

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Ask your Jobber. Buy one for your men to try—they'll call for more—and you save money for your Company by furnishing them, which may be worth *your* while.

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Millions of users have found that they actually do save nearly all wrench trouble and repair expense with the powerful all-alloy RIDGID.

Sizes 6" to 60" Straight Wrench
6" to 36" End Wrench

The Ridge Tool Co., Elyria, Ohio

RIDGID PIPE TOOLS

ON EVERY IMPORTANT POIN

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